

**Texas Death Penalty Developments in 2007**  
**The Year in Review**

**Prepared by the**  
**Texas Coalition to Abolish the Death Penalty**

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## Texas Death Penalty Developments in 2007: The Year in Review

December 7, 2007 marks the 25<sup>th</sup> anniversary of the resumption of executions in Texas – and the nation’s first execution by lethal injection. This comes at a time of unprecedented scrutiny of the death penalty on numerous fronts. Even Texas has felt the impact and implications of this intense period of review.

This report presents information on the death penalty in Texas in 2007, including executions, stays, and new death sentences, judicial and legislative activity, and other developments affecting the criminal justice system in the nation’s most active death penalty state.

### **Executions**

In 2007, the State of Texas carried out 26 executions, accounting for 62% of the executions that took place in the United States this year. The 42 executions nationwide in 2007 is the lowest annual number of executions since 1994, when 31 people were put to death. The executions in Texas occurred at a time when nearly a dozen other states had instituted a moratorium or were considering issues related to the administration of lethal injection. From January 10 to April 23, Texas was the only executing state in the country. Only nine other states carried out executions in 2007; none executed more than three people.

<b>Executions in 2007</b>	
<b>Texas</b>	<b>26</b>
Oklahoma	3
Alabama	3
Ohio	2
Indiana	2
Tennessee	2
Arizona	1
South Carolina	1
South Dakota	1
Georgia	1
<b>Total</b>	<b>42</b>

Texas now has executed a total of 405 people since 1982 (of 1,099 executions nationwide since 1977).

Of the 26 people executed in Texas in 2007, 12 were white, 8 were African American, and 6 were Latino/Hispanic. All were male. Nine of the executed inmates had been convicted in Harris County, which alone accounts for more executions than any state in the country besides Texas as a whole. The execution of Lonnie Johnson on July 24 was the 100<sup>th</sup> execution out of Harris County since 1982. Harris County now accounts for 102 executions; Dallas County is a distant runner up, with 34 executions. Virginia, which is second to Texas in terms of its overall number of executions, has carried out 98.

On August 22, the State of Texas carried out its 400<sup>th</sup> lethal injection since 1982, with the execution of Johnny Conner. The European Union (EU) appealed directly to Governor Rick Perry to “exercise all powers vested in his office” to halt this execution and to introduce a moratorium on the death penalty. The death penalty is banned in the 27-nation EU, which advocates for global abolition. In its statement, the bloc noted that “The irreversibility of the punishment means that miscarriages of justice – which are inevitable in all legal systems – cannot be redressed. We believe that elimination of the death penalty is fundamental to the protection of human dignity, and to the progressive development of human rights. We further consider this punishment to be cruel and inhumane.” In his response to the EU, Robert Black, spokesman for Governor Perry, declared that:

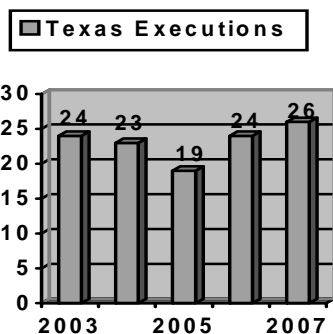
“230 years ago, our forefathers fought a war to throw off the yoke of a European monarch and gain the freedom of self-determination. Texans long ago decided that the death penalty is a just and appropriate punishment for the most horrible crimes committed against our citizens. While we respect our friends in Europe, welcome their investment in our state and appreciate their interest in our laws, Texans are doing just fine governing Texas.”

Governor Perry now has presided over more executions (166) than any other U.S. governor in modern times, surpassing his predecessor President George W. Bush’s record of 152 executions.

Among the 26 people executed in 2007, the following three cases illustrate some of the issues that continue to impact the administration of the death penalty in Texas:

- On March 7, 2007, the State of Texas executed **Joseph Nichols** for the 1980 murder of Claude Schaffer, Jr. Nichols was convicted under the law of parties, a unique Texas law under which no distinction is made between the principal actor and the accomplice in a crime and each defendant may be held equally culpable. In this case, two people were executed for killing a man who died from a single bullet wound. The prosecution had argued in separate trials that both Joseph Nichols and his co-defendant, Willie Williams (executed in 1995), had fired the fatal shot that killed Claude Schaffer. In 1992, a federal judge found that since two men could not be guilty of firing the same bullet, the prosecution knowingly had presented false evidence by changing its argument from Nichols' first trial to his retrial. Judge David Hittner ordered that Nichols be released or retried. The state appealed, however, and the Fifth Circuit Court of Appeals overturned the ruling. Joseph Nichols was just over 19 years old at the time of the crime. He spent 25 years on death row.
- On April 11, 2007, **James Clark** was executed despite evidence of his mental retardation. He was convicted of the 1993 murder of 17-year-old Shari Crews. According to some tests, Clark had an IQ of 68 or lower, which meets one of the criteria for mental retardation. (An earlier test had put Clark's IQ at 74, also close to the standard for mental retardation.) Tests administered by Dr. Denis Keyes in 2003 found Clark's mental capacities to be at or below roughly 92% of the U.S. population. His adaptive skills level placed him in the lowest 1% of the general population. Dr. Keyes said Clark's ability to conform his behavior to that expected of his same age group was "virtually nonexistent." Although the U.S. Supreme Court prohibited the application of the death penalty to persons with mental retardation in *Atkins v. Virginia* (2002), the Texas Legislature has failed to enact statutory provisions governing the standards and procedures to be followed in these cases.
- On September 25, 2007 – the same day the U.S. Supreme Court announced that it would hear a Kentucky case, *Baze v. Rees*, which is challenging the constitutionality of the lethal injection process – the State of Texas executed **Michael Richard**. He was convicted of the 1986 rape and murder of Marguerite Lucille Dixon. Richard's lawyers scrambled to file a last-minute appeal in light of this significant legal development, but computer problems prevented them from delivering the paperwork to the Texas Court of Criminal Appeals by 5:00 PM. Presiding Judge Sharon Keller unilaterally denied the attorneys' request to stay open for an extra 20 minutes, even though other judges had remained in their offices late that evening, anticipating that they would be called upon to take action in the case. Because the Court of Criminal Appeals did not consider the appeal, there was no means for the U.S. Supreme Court to step in and the execution was allowed to proceed. All scheduled executions – both in Texas and around the country – have since been stayed pending the outcome of *Baze v. Rees*.

Judge Keller has been criticized by politicians, by the media, and by several of her fellow judges on the court for her decision to close the office. The National Association of Criminal Defense Lawyers has



filed a complaint against her – the first judicial complaint the group has ever filed. At least 150 lawyers across Texas also filed a complaint against Judge Keller with the State Commission on Judicial Conduct, which investigates cases of judicial misconduct. Additionally, more than 300 lawyers – including 2 former Texas Supreme Court justices, the head of the Texas Commission for Lawyer Discipline, and partners of leading Texas law firms – endorsed a petition calling for the Texas Court of Criminal Appeals to accept electronic filings. In response, on November 6, the court created an e-mail filing system for emergency death penalty appeals and other “extraordinary” matters.

### Stays of Execution/Warrant Withdrawals

Seven inmates scheduled for execution in 2007 received last-minute stays, due to concerns about their possible innocence, the fairness of their trial, or issues related to lethal injection:

- **Larry Swearingen**, scheduled for execution on January 24, received a stay from the Texas Court of Criminal Appeals in order to review new evidence that his attorneys claim might prove his innocence.
- **Ronald Chambers**, scheduled for execution on January 25, received a stay from the U.S. Supreme Court. Chambers is the longest-serving Texas death row inmate (31 years). His attorneys had asked the justices to postpone his execution until they ruled on another Texas case that raised questions about whether jurors were properly instructed to consider mitigating factors when deciding a death sentence (see U.S. Supreme Court Decisions below). On April 30, the Supreme Court overturned Chambers' death sentence and sent the case back to a lower court.
- **Jose Moreno** received a stay on the day of his execution, May 10, after the Texas Court of Criminal Appeals agreed to rehear an earlier appeal focused on his contention that the jury was unable to properly weigh mitigating evidence when considering whether to sentence him to death (see U.S. Supreme Court Decisions below).
- **Cathy Henderson** received a stay from the Texas Court of Criminal Appeals two days before her execution date of June 13. The divided 5-3 court returned the case to Travis County, where a district court judge will determine whether scientific advances into pediatric head injuries cast doubt on Henderson's capital murder conviction in the 1994 death of 3-month-old Brandon Baugh. Henderson has maintained that his death was an accident; new research now shows that infants can receive fatal head injuries from short falls far more easily than was once believed. Henderson's appeal was bolstered by a statement from then-Travis County Medical Examiner Robert Bayardo, who disavowed his earlier testimony that Brandon could not possibly have been injured in a fall.
- **Rolando Ruiz**, scheduled for execution on July 10, received a stay from the Fifth Circuit Court of Appeals so that the court could consider his claim of ineffective assistance of counsel. On October 11, the Fifth Circuit granted Ruiz relief, continuing his stay of execution and directing a U.S. district judge to consider his claim.
- **Carlton Turner**, scheduled for execution on September 27, and Honduran native **Heliberto Chi**, scheduled for execution on October 3, both received stays pending the U.S. Supreme Court's consideration of a case involving the constitutionality of lethal injection (*Baze v. Rees*).

Attorneys in Harris and Bell Counties have since announced that they will not seek any new execution dates until the Supreme Court rules. Nueces County District Attorney Carlos Valdez announced that he would not seek any new death sentences until the case is resolved.

In addition to the stays cited above, on September 12 Dallas County District Attorney Craig Watkins asked that the execution order for **Joseph Lave** be withdrawn. Lave's execution had been scheduled for the next day. The request came after Watkins' office discovered that long-requested information regarding a second polygraph test by a co-defendant had not been turned over to the defense; the previous district attorney's administration had asserted that the evidence did not exist. Attorneys on both sides are examining the legal ramifications of the suppressed evidence. Lave had been convicted under the law of parties for the 1992 deaths of Justin Marquart and Frederick Banzaf.

### Commutations

On August 30, after receiving a rare recommendation from the Texas Board of Pardons and Paroles (by a vote of 6 to 1), Governor Perry granted clemency to **Kenneth Foster** and commuted his sentence to

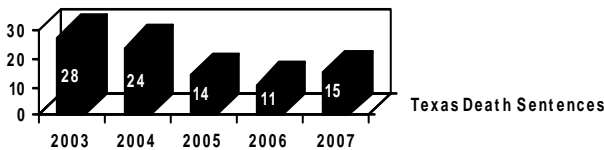
life in prison. Foster had been scheduled to be executed that evening. He was convicted under the law of parties for the 1996 murder of Michael LaHood, even though he was sitting in a car 80 feet away at the time of the crime. The man who had actually killed LaHood, Mauriceo Brown, was executed last year. This was only the third such recommendation for clemency from the Board in 25 years, and the first such decision for Governor Perry in a case where the defendant faced imminent execution. In justifying the commutation, Perry expressed concern about a Texas law that allows capital murder defendants to be tried simultaneously and he urged the legislature to examine the issue.

Earlier in the year, on March 9, Governor Perry commuted the death sentence of **Doil Lane**, due to overwhelming evidence of his mental retardation. The state district judge, the Hays County district attorney, and the San Marcos chief of police all agreed with the assessment and supported the Board of Pardons and Paroles' recommendation to commute his sentence to life in prison.

Six other inmates were removed permanently from death row in 2007; their sentences were commuted to life in prison. The Court of Criminal Appeals commuted the death sentence of Kenisha Berry after finding that there was insufficient evidence that she presented a "future danger" to society. The Court commuted the death sentences of Demetrius Simms, Exzavier Stevenson, and Gregory Van Alystne after accepting the findings of fact that these men met the standard for mental retardation. It has not been determined how many people with mental retardation remain on death row in Texas.

**New Death Sentences**

According to data available from the Texas Department of Criminal Justice and the Office of Court Administration, 15 men were sentenced to death in Texas in 2007 (as of December 13, 2007). Over the last five years, the number of new death sentences in Texas has declined by approximately 50%, which mirrors national trends. Death sentences in Texas peaked in 1999, when 48 people were sent to death row.



Currently there are 371 inmates on death row in Texas, which is the second largest death row population in the nation (California has 666 death row inmates). Harris County alone accounts for nearly a third of all Texas inmates awaiting

execution. Yet in the last three years, only seven people have been sentenced to death in Harris County, a significant change from the first half of the 1990's, when 10 to 15 people per year were being condemned to death. (*Houston Chronicle*, July 26, 2007) According to Carl Reynolds, the administrative director of the Office of Court Administration, the decline in Harris County is largely responsible for the overall decrease in new death sentences in Texas. (*Texas Lawyer*, November 20, 2006) Several defense attorneys assert that the increasing costs of capital trials have led prosecutors to narrow the occasions when they seek the death penalty. Other experts cite U.S. Supreme Court decisions prohibiting the death penalty for persons with mental retardation and juvenile offenders, new rules regarding the presentation of mitigating evidence, the public's awareness of wrongful convictions, and Texas' new sentencing option of life without the possibility of parole as additional factors in the decline in new death sentences.

**Possible Innocence**

On June 28, after a 19-month investigation, the Bexar County District Attorney's Office released its report on whether Texas had wrongfully executed an innocent man, Ruben Cantu. An earlier investigation by the *Houston Chronicle* had called into question the testimony of the surviving eyewitness, Juan Moreno, who only identified Cantu as the assailant after being shown a photo lineup on three occasions by police officers. Cantu's alleged codefendant, David Garza, also attested in a sworn statement that Cantu had not been involved in the crime.

The re-investigation into Cantu's case was conducted by the office of District Attorney Susan Reed, who, as a state district judge, had signed the order setting Cantu's execution date in 1993. In spite of this apparent conflict of interest, Reed rejected calls to recuse herself and allow for an outside review. The report's findings, which confirmed Cantu's guilt and death sentence, subsequently have been greeted with skepticism. Sam Millsap, the former district attorney of Bexar County who had approved the death penalty prosecution of Cantu, continues to call for a full, fair, and unbiased investigation into this case. Other critics have urged the state to create an innocence commission to handle such claims in the future (see Legislative Developments below).

### **Houston Police Department Crime Lab**

On June 13 – more than four years after the discovery of hundreds of incidents of mishandled or tainted evidence and botched testing at the Houston Police Department's crime lab – independent investigator Michael Bromwich completed his \$5.3 million probe and released a final report. Among his findings, Bromwich recommended the appointment of a "special master" to review more than 180 convictions with "major issues" related to questionable body fluid testing known as serology. Investigators found the serology division was among the most troubled in the lab, turning out unreliable evidence at an alarming rate. (*Houston Chronicle*, October 13, 2007)

Houston Mayor Bill White, Police Chief Harold Hurtt, and Harris County District Attorney Chuck Rosenthal initially balked at the recommendation to hire an outsider to conduct the serology review and instead sought to handle the cases internally, at public expense. In mid-October, after several months of stalemate over how to proceed, Harris County criminal district judges stepped in and appointed a panel to review the problematic cases. The judges have assigned three defense attorneys to determine how important the crime lab evidence was in securing the 180 convictions and what further steps, if any, should be taken on each case. Since October 22, Judge Mary Bacon, a retired state district judge overseeing the review, has conducted hearings with all inmates currently incarcerated in these cases. Of 160 inmates contacted at various Texas prisons via video conferences, all but four agreed to have their cases reviewed. (*Houston Chronicle*, November 2, 2007)

The judges' action came in the wake of yet another exoneration resulting from the crime lab scandal. On October 4, Harris County officials agreed with the exoneration of **Ronald Gene Taylor**, who had been convicted of rape and incarcerated since 1993. New DNA testing conducted over the summer revealed that another man was guilty of the crime. Taylor had been convicted on the basis of faulty eyewitness identification. (See pages 7-8 for information on other recent DNA exonerations.)

### **U.S. Supreme Court Decisions Involving Texas Cases**

Following the pattern of recent years, 2007 brought yet more decisions from the U.S. Supreme Court that addressed problems with Texas' administration of the death penalty and rebuked lower court rulings:

- On April 25, the Court overturned the death sentences of three Texas inmates – **LaRoyce Smith**, **Jalil Abdul-Kabir** (Ted Cole), and **Brent Ray Brewer** – in separate 5-4 rulings. In all three cases, the majority determined that the statute in effect at the time of these convictions (1991 or earlier) had prevented juries from fully considering the mitigating evidence presented by the defendants, such as mental deficiencies or childhood abuse. In *Smith v. Texas*, the Supreme Court, which had previously reviewed the case, rejected the Texas Court of Criminal Appeals' analysis that any error on the mitigation issue was harmless and therefore did not require a reversal. In *Abdul-Kabir v. Quarterman* and *Brewer v. Quarterman*, the Supreme Court reversed the Fifth Circuit, holding that it had not properly applied the holdings of prior cases in which the High Court made it clear that "sentencing juries must be able to give meaningful consideration and effect to all mitigating evidence that might provide a basis for refusing to impose the death penalty on a particular individual, notwithstanding the severity of his crime or his potential to commit similar offenses in the future." (*Death Penalty Information Center*)

Dallas County prosecutors immediately announced their intention to seek a new death sentence for LaRoyce Smith. Prosecutors in the other two cases still appear to be weighing their options. Forty-four additional inmates currently on death row in Texas were sentenced under the same flawed statute, which was amended in 1991. At least two inmates – Ronald Chambers and Jose Moreno – received stays of execution in light of the Court’s ruling in *Smith*.

- On June 28, in a 5-4 decision, the Supreme Court ruled in favor of Texas death row inmate **Scott Panetti** and blocked his execution. Panetti had been sentenced to death despite his long, documented history of paranoid schizophrenia. The Court questioned the value of executing someone who does not comprehend why he is being put to death: Panetti believes that the state intends to execute him in order to prevent him from preaching the gospel in prison. The Justices found that the Fifth Circuit Court of Appeals used “an improperly restrictive test” in deciding that Panetti was sane enough to be executed, and that the Texas courts had not provided him with a proper competency hearing. The Fifth Circuit had said that it did not matter what Panetti believed as long as he could acknowledge the murders as well as the stated purpose of his execution. The Supreme Court decision sends the case back to a federal district judge, who will hold a hearing to determine whether Panetti’s delusions are indeed so severe that he cannot make the connection between his crime and the resulting punishment and should be spared from execution. The Fifth Circuit has never found a death row inmate incompetent to be executed.
- On October 10, the Supreme Court heard arguments in *Medellin v. Texas*, which involves Texas death row inmate **Jose Medellin**, one of 51 Mexican foreign nationals throughout the country who were denied their right to contact Mexican consular officials upon arrest. In 2004, the International Court of Justice (ICJ) ruled in a case brought by the Mexican government that the United States had violated its obligations under the Vienna Convention on Consular Relations. The ICJ’s ruling called on U.S. courts to review the cases, but officials in Texas refused to comply.

The Supreme Court first heard the Medellin case in 2005, but before it could be decided, President Bush ordered the respective state courts to provide the review required by the ICJ. The Supreme Court then dismissed Medellin’s case to allow time for this review. Texas courts again refused, claiming that President Bush did not have the power to give such an order. Medellin again appealed to the Supreme Court, which granted certiorari to consider the extent of President Bush’s power to order compliance with the ICJ’s ruling. Representatives for the State of Texas argued that the Constitution does not give the president direct authority over state or federal courts. The Bush Administration contends that state courts cannot be allowed to veto treaty obligations and that the president has inherent authority stemming from his unique foreign policy role. A decision in the case is expected early next year. (*Dallas Morning News*, September 20, 2007) There are approximately 15 Mexican nationals on death row in Texas.

### **Legislative Developments**

Despite the objections of numerous victims’ and child welfare advocates, prosecutors, and editorial boards throughout the state, the 80<sup>th</sup> Session of the Texas Legislature passed a compromise version of **Jessica’s Law (House Bill 8)**, named in memory of 9-year-old Jessica Lunsford of Florida. The legislation allows the death penalty for those who twice rape a child under age six, or those younger than 14 if the crime also involves the use of a deadly weapon, alcohol or drugs, death threats, bodily injury, kidnapping or gang rape. It also creates a new offense for “continual sexual abuse of a child or children” over a period of 31 days or more and lifts the statute of limitations for sex crimes against children under age 17. The House voted 119-25 in favor of the measure. The Senate vote was 30-1; Senator Rodney Ellis (D-Houston) was the sole dissenter. Governor Perry signed the bill into law, which went into effect on September 1, 2007.

Victims' advocates and prosecutors had urged legislators to exclude the death penalty from the new legislation out of concern that the threat of such a punishment could result in fewer reported cases of sex crimes, since the vast majority of child-sex victims know their offenders, and might cause offenders to kill their victims in order to prevent them from testifying. Prosecutors also feared that allowing the death penalty in such cases would make offenders less likely to plead guilty, thereby clogging courts and forcing child victims to testify in extended jury trials. (*Dallas Morning News*, January 5, 2007)

Texas joined more than a dozen states that have adopted such laws against child sex offenders, and it became the sixth state to allow the death penalty for those who commit certain sex crimes against children. It remains open to question whether these laws will be upheld as constitutional by the U.S. Supreme Court, however. In a 1977 ruling, the Court banned the use of the death penalty as punishment for the rape of a 16-year-old, stressing that death should be reserved for those who take a life. In an expected test case, Patrick Kennedy, on death row in Louisiana for raping his 8-year-old stepdaughter, has appealed to the Supreme Court.

Lawmakers also considered a variety of measures aimed at improving the state's criminal justice system, establishing a moratorium on executions, or abolishing the death penalty altogether:

- **Senate Bill 1655**, co-sponsored by Sen. Ellis and Sen. Robert Duncan (R-Lubbock), would have created a state Office of Capital Writs, employing specialized attorneys and investigators to help indigent death row inmates file petitions for writs of habeas corpus. The office would be run by a director hired by the Court of Criminal Appeals from a list prepared by an outside committee. Among the 38 states that allow for the death penalty, only Texas and three others rely on private lawyers to handle death penalty writs of habeas corpus, which are complicated appeals meant to ensure that death sentences are legally and constitutionally applied. Senate Bill 1655 cleared the Senate 30-0 in mid-April and was supported by the governor, appellate judges, the State Bar of Texas, and leading lawmakers of both parties. (*Austin American-Statesman*, June 9, 2007) It was derailed in the House, however, and never reached the floor for a vote.
- **Senate Bill 799**, also authored by Sen. Ellis, would have improved the accuracy and reliability of the state's eyewitness identification procedures. **Senate Bill 262** sought to double compensation from \$25,000 to \$50,000 for each year a wrongfully convicted person spent in prison. Both bills passed the Senate and their respective House Committees, but did not make it to the House floor for a vote.
- The House Committee on Criminal Jurisprudence voted out **House Joint Resolution 23**, authored by Rep. Elliott Naishtat (D-Austin); **SJR 21**, the companion resolution in the Senate, was authored by Sen. Eliot Shapleigh (D-El Paso). The Joint Resolution called for a constitutional amendment giving the Governor the authority to impose a moratorium on executions, which is an executive privilege of other governors throughout the country. The resolutions received no further action in either chamber.
- **House Bill 3740**, a bill to abolish the death penalty, was introduced by Rep. Jessica Farrar (D-Houston), but did not receive a hearing.
- **Senate Bill 263**, sponsored by Sen. Ellis, would have created a state innocence commission, a nine-member body charged with reviewing documented cases of wrongful conviction in order to discover what factors contributed to the conviction. The commission also would make recommendations for improving the criminal justice system. The bill passed the Senate 21-10 but languished in the House Criminal Jurisprudence Committee.

The Senate Criminal Justice Committee hearing on the bill featured testimony from several exonorees, including **James Giles**, the 13<sup>th</sup> person in six years to be exonerated from Dallas County as a result of DNA technology, the most in any county nationwide. According to the Innocence



Project, nearly all those proven innocent by DNA testing in Dallas County were convicted partly on the basis of eyewitness misidentification. A 14<sup>th</sup> exoneration in Dallas County was announced in September. Texas leads the nation with 29 DNA exonerations.

Although the proposal to create an innocence commission failed in the legislature, it received a pledge of support in October from Lieutenant Governor David Dewhurst during a meeting with the *Fort Worth Star-Telegram's* Editorial Board. Dewhurst said that he would ask the Senate to conduct an interim study during the legislature's hiatus to determine the commission's charge. (*Fort Worth Star-Telegram*, October 4, 2007)

### **Media Coverage**

This past year has been notable for media coverage of the death penalty issue in Texas. On April 15, declaring that "We cannot support a system that is both imperfect and irreversible," the *Dallas Morning News* Editorial Board announced that the paper had reversed its more than 100-year-old position of supporting the death penalty to instead call for its complete abolition in Texas. The editors expressed particular concern about the risk of executing the innocent. The *Dallas Morning News* joined other newspapers – such as the *Chicago Tribune* and the *Birmingham (Alabama) News* – that have recently reversed decades-long support for the death penalty. It is the second newspaper in Texas to call for abolition, following the *Austin American-Statesman*.

In addition, nearly all state newspapers opposed the death penalty provision of Jessica's Law, called for clemency in the case of Kenneth Foster, and joined with members of the legal community in criticizing Judge Sharon Keller's decision not to accept a late appeal from the attorneys of Michael Richard.

### **Advances in Legal Representation**

In mid-November, Lubbock attorney Jack Stoffregen was hired to lead the newly-created West Texas Regional Public Defender for Capital Murder Cases, the only office of its kind in Texas. Representing 85 counties in West Texas, the office is based in Lubbock and is charged with providing quality representation to indigent defendants facing the death penalty. The office consists of the chief public defender and a 10-member staff, which will include four additional attorneys with specialized training in capital cases and two investigators.

The Public Defender's office was established through a grant from the Texas Task Force on Indigent Defense, with support from Senators Duncan, Ellis, and Kel Seliger (R-Amarillo), as well as Rep. Aaron Pena (D-Edinburg). The state will pay for the office for the first year; the 85 counties will increase their contributions in subsequent years and will assume the entire cost by 2012. The office is intended to assist counties with the high costs associated with death penalty trials.

The Task Force on Indigent Defense also funded the creation of a Mental Health Public Defender Office in Travis County, the first such office in the nation. Staff began work in April to represent offenders with mental illness in misdemeanor cases. At full staff, it will have two attorneys, two social workers, two caseworkers, and two clerical workers who can provide specialized support for clients. Also this year, Bexar County joined Dallas and El Paso Counties in establishing a mental health court that will address the needs of defendants with mental illness who come into contact with the criminal justice system.

### **Conclusion**

In a year of caution, when most other states expressed concern about or acknowledged problems with their administration of the death penalty, Texas continued to carry out executions at a rate that far exceeded any other state. At one point, Texas even appeared to be on track to carry out an above average number of executions. A variety of state and federal court decisions forced the state to put its death penalty apparatus on hold for the time being, however. In addition, a spate of exonerations from Dallas County, the ongoing review of cases implicated by the Houston Police Department crime lab scandal, and

investigations into potential wrongful executions continue to raise questions about the reliability of the criminal justice system. The decline in new death sentences also appears to reflect public concerns about fairness and accuracy. While efforts to improve the system met with mixed success in 2007, there is promise that recent events will have a positive impact on the future of capital punishment in Texas.

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