Local decisions key to death penalty

UL Lafayette professor says question of whom to execute and for what up to local prosecutors

Bill Decker
Metro Editor

LAFAYETTE — Members of the Louisiana Council on Human Relations wanted to know how to abolish the death penalty. University of Louisiana at Lafayette professor Burk Foster told them Saturday to take the district attorney to lunch.

"Perhaps one day he will change his mind about the death penalty and stop seeking the death penalty in the cases he prosecutes," Foster said at the council’s meeting at Robicheaux Recreation Center in Neyland Park.

Foster’s tongue-in-cheek advice underscored a reality about capital punishment in America. While the death penalty is a national issue, he said, local prosecutors nearly always make the decisions about whom to execute and for what.

Foster is a UL Lafayette criminal justice professor who said he has worked with defense attorneys in more than 200 first-degree murder cases in Louisiana. He, like the Council on Human Relations, is opposed to capital punishment.

They hold a minority view. The 38 states with death penalty laws sentence 200 to 300 people to death each year. Polls

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Death penalty in the 1990s

The ratio of homicides to death sentences in Louisiana parishes, 1990-99:

<table>
<thead>
<tr>
<th>Parish</th>
<th>Death sentences</th>
<th>Ratio</th>
</tr>
</thead>
<tbody>
<tr>
<td>E. Baton Rouge</td>
<td>16</td>
<td>46-to-1</td>
</tr>
<tr>
<td>Jefferson</td>
<td>14</td>
<td>38-to-1</td>
</tr>
<tr>
<td>Orleans</td>
<td>12</td>
<td>260-to-1</td>
</tr>
<tr>
<td>Caddo</td>
<td>8</td>
<td>70-to-1</td>
</tr>
<tr>
<td>Rapides</td>
<td>4</td>
<td>30-to-1</td>
</tr>
<tr>
<td>Calcasieu</td>
<td>4</td>
<td>36-to-1</td>
</tr>
<tr>
<td>Ouachita</td>
<td>3</td>
<td>47-to-1</td>
</tr>
<tr>
<td>Terrebonne</td>
<td>2</td>
<td>29-to-1</td>
</tr>
<tr>
<td>St. Tammany</td>
<td>1</td>
<td>74-to-1</td>
</tr>
<tr>
<td>Lafayette</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Other parishes</td>
<td>21</td>
<td>74-to-1</td>
</tr>
</tbody>
</table>

SOURCE: Compiled by Burk Foster from FBI Uniform Crime Reports
Penalty

show overwhelming support among Americans for the death penalty. And after 38 years, the federal government began executing criminals again this month by administering lethal injections to Oklahoma City bomber Timothy McVeigh and drug lord Juan Garza.

Foster said other Western nations — nearly all of which have stopped executing criminals — set legal policy at the national level. But in the United States, district attorneys decide when to seek the death penalty.

"The death penalty today in America is mostly about politics," Foster said. "We could get along quite easily without it."

One result: "The death penalty is not evenly applied like paint across a canvas," Foster said.

According to Foster:

- Of the nation's 3,000 counties, fewer than 100 imposed death sentences last year.
- In Louisiana, generally tough in its sentencing rules, only about half the 64 parishes have imposed death sentences since capital punishment was reinstated in 1977.
- Of the 85 death sentences imposed by Louisiana courts in the 1990s, three parishes — East Baton Rouge, Jefferson and Orleans — accounted for 42. Lafayette imposed no death penalties in the 1990s, and St. Tammany sentenced only one person to death.
- In Texas, which leads the nation in executions, only 42 of the state's 254 counties have sent prisoners to death row.
- Harris County, Texas, where Houston is located, accounts for nearly a third of the people on that state's death row.

Pete Bon Homme — of Breaux Bridge, a member of the Louisiana Council on Human Relations, said he isn't discouraged by the odds against ending capital punishment.

"I do feel that we can have some impact on the process," Bon Homme said. "Maybe we won't see it in our lifetime."

Death penalty in Louisiana

Louisiana law allows the death penalty for people convicted of first-degree murder. The law defines first-degree murder as the killing of a human being when the offender has the specific intent to kill and:

- Kills in the course of one of a list of serious crimes, including armed robbery, aggravated rape, forcible rape, aggravated kidnapping and aggravated arson.
- Kills an on-duty firefighter or law enforcement officer.
- Kills more than one person.
- Kills as part of a murder-for-hire plot.
- Kills while buying or selling certain narcotics.
- Kills someone younger than 12 or older than 65.
- Kills in the course of ritualistic dismemberment or torture.

If the prosecution decides to seek the death penalty in a first-degree murder case, a 12-member jury can convict with a unanimous vote. After a conviction, the court convenes again for the penalty phase. The prosecution presents evidence to show why execution is justified; and the defense presents evidence to persuade the jury that the proper penalty is life in prison. The jury can vote to impose the death penalty. If it doesn't, the defendant serves life in prison.