Pat Lykos: Texas' Capital Punishment Avenger
By Ben Crair

NEW YORK – Harris County was once the nation's execution capital, but now its crusading Republican D.A. is setting innocent prisoners free. Ben Crair on the woman who's turning around Houston.

Change was the message of the 2008 election, but you wouldn't have expected it from Pat Lykos, Houston's chain-smoking, Cadillac-driving Republican district attorney. She was elected three years ago to the office once run by Johnny B. Holmes—the deadliest prosecutor in modern U.S. history. "I say without apology that if you murder someone here, the state of Texas is going to kill you," Holmes once said. His handlebar mustache showed he wasn't kidding.

Between 1979 and 2000, Holmes built Harris County, Texas, into the execution capital of the nation. Since the Supreme Court reinstated capital punishment in 1976, Harris County has sent more prisoners to the death chamber than any state in the country. Holmes was just as ruthless with lesser criminals, once seeking a life sentence for a substitute teacher who sold a joint to a student. "Harris County was the standard bearer of everything bad in criminal justice for a long time," says Jeff Blackburn of the Innocence Project of Texas.

And yet, with Lykos at the helm, the office has undergone an astonishing turnaround. The Harris County D.A.'s office won the Innocence Project of Texas' "Honesty and Integrity in Prosecution Award" last fall. Under Lykos, the county "is becoming the single most powerful example of how to change this system and make it work right," Blackburn says. Lykos isn't just sending fewer people to death row; she's using her prosecutorial power to set the innocent free.

"It's a triple tragedy," says Lykos, who has recommended three exonerations so far—the latest just last month. "You have someone who's wrongfully convicted; there's no justice for the victim or for society; and thirdly the actual predator is free to continue his or her deprivations."

The exonerations are the result of Lykos' post-conviction review unit, which is investigating hundreds of prisoners' innocence claims. The unit is the second of its kind in Texas after Dallas County, where District Attorney Craig Watkins has exonerated 10 prisoners since 2007. (Lykos has not matched Watkins' total in large part because the Houston Police Department Crime Lab was so bad; Dallas' independent crime lab preserved old evidence while the HPD often neglected or threw it away.) What distinguishes Lykos is her politics. While Watkins is a Democrat, Lykos is a self-described "Goldwater-Reagan Republican" who became Harris County's first female criminal court judge in 1980, when the rest of the bench was Democratic.

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"No one would ever question her credentials as a conservative, tough law-and-order advocate," says attorney Bob Wicoff, whose client Michael Green served 27 years on rape charges before Lykos exonerated him in 2010. Wicoff adds, "Sometimes the people with the most unassailable credits as a conservative can be the ones to make the overture."

And yet Texas' Republican establishment has proven reluctant to reopen the book on past convictions—even in cases where it appears the state may have executed innocent men. When an article in The New Yorker suggested Texas wrongfully executed Cameron Todd Willingham in 2004, Governor Rick Perry
responded by gutting a state panel reviewing the evidence. Because of such intransigence, it has fallen to local district attorneys like Lykos to shine a light on the state’s worst errors.

By Lykos’ reckoning, her conservatism was formed “almost in utero.” She was born in 1943 in Pennsylvania. Her first brush with law enforcement came as a child, when she remembers the local cops checking in on her parents’ grocery store. After she moved to Texas, she became a police officer herself, patrolling the streets of Houston to pay her way through college at the University of Houston and the South Texas College of Law. “Back in the days when I was an officer, there was very little done to assist victims,” Lykos says. As a judge, she tried to remedy this failure by frequently ordering defendants to pay restitution to their victims.

With her short gray hair and no-nonsense glare, Lykos was notoriously grouchy with the gavel. “Sometimes her disposition would be like Joan Collins on her menstrual cycle,” says defense attorney Brian Wice, who now counts himself a fan. The complaint was common: Surveys of defense lawyers by the Houston Bar Association consistently ranked her as one of the region’s worst judges. (Lykos dismisses the criticism: “I talked about the details and that took time,” she says. “I believe that some lawyers probably resented that.”)

Despite her surly streak—which persists to this day, according to former prosecutors—Lykos’ work as a judge may have disposed her to take a more balanced approach to defendants’ rights than had career prosecutors like Holmes: After all, she had to consider both sides of every trial. “She is actually willing to listen to people whose viewpoints differ from hers, and for people who have been doing this kind of work in Harris County for a long time, that is something that has been missing from that office,” says defense lawyer David Dow, founder of the Texas Innocence Network.

Still, Lykos may have never become district attorney had it not been for scandal. Her predecessor Chuck Rosenthal resigned in 2008 after he was caught sending racist and pornographic emails from his work account. A career prosecutor who had worked under Holmes, Rosenthal had won reelection in 2004 despite a more serious scandal at the crime lab that entitled nearly 400 prisoners to new DNA testing. Rosenthal agreed to retest DNA for prisoners whose trial evidence was tainted by the crime lab. However, he kept up aggressive prosecutions without requiring DNA evidence to be tested before trial. The results were predictable: In June 2003, his office won a 40-year sentence for Ricardo Rachell for a rape that he had not committed.

“Rosenthal reacted to circumstances where he was required to,” says Wicoff. “Lykos is really taking the bull by the horns and looking into these things.” (In addition to the post-conviction review unit, Lykos ordered a full review of what went wrong in the Rachell case and began automatically testing all available DNA evidence before trial.)

The most recent exoneration came in March for George Rodriguez, who served 17 years for a rape he did not commit. He had gotten out of prison during the crime-lab scandal in 2004, when it turned out that the evidence used to convict him had been tested incorrectly. But Rosenthal withheld an official exoneration, which would have entitled Rodriguez to a potential $1.4 million in state money.

Lykos’ post-conviction review unit recovered 12 new pubic hairs from the crime lab and used a cutting-edge new test to extract sperm and skin cells that proved Rodriguez could not have committed the rape. Lykos recommended an exoneration and a judge accepted, clearing the way for Rodriguez to collect his compensation.

“Here’s the really important thing: The idea to do that DNA test came from the conviction-integrity unit,” says Rodriguez’s lawyer, Innocence Project Founder Barry Scheck.

Lykos isn’t a clean break from Harris County’s past, especially when it comes to capital punishment. She won just two death sentences in 2010, but infuriated anti-death penalty activists last year by ordering prosecutors to “stand mute” during hearings on the constitutionality of the death penalty, arguing the trial court was an “inappropriate venue.”
"I thought it was a scandalous and embarrassing performance," Dow says. "It reflects such confidence in the corruption of the system because they just know they're going to win in the court of appeals." (An appeals court did, in fact, end the hearings.)

But Dow says Lykos' other accomplishments help balance out that episode. "I'm glad there's a yin in that office considering there used to be only a yang."