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Death penalty on trial

An examination of the flawed Texas capital punishment system is long overdue.

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A challenge to the constitutionality of the death penalty as practiced in Texas unfolds in a hearing in state District Judge Kevin Fine's court tomorrow. It's a fitting venue, since Texas has been by far the leading practitioner of capital punishment since its reinstatement in the United States in the '70s, and for years Harris County was the leading source of convictions. Approximately a third of the 316 inmates currently awaiting execution come from here.

The case that prompted the hearing is that of 25-year-old John Edward Green, charged in a 2008 robbery-killing in southwest Houston. Nine months ago Judge Fine, one of a wave of Democratic jurists who broke the all-Republican hold on Harris County district courts two years ago, issued a controversial ruling that the Texas death penalty was unconstitutional because of procedural flaws. After an ensuing furor from county law enforcement officials, Judge Fine backtracked, rescinding his ruling but setting the stage for an in-depth examination of capital punishment practices in the Lone Star state.

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The challenge crafted by Green's attorneys, John P. Keirnan, Robert K. Loper and Richard Burr, is notable in that it does not claim capital punishment is unconstitutional, only that the slipshod and inequitable imposition of it in Texas violates Eighth Amendment protections. Their pleading argues that "capital punishment schemes that create a 'substantial risk' that innocent people are wrongfully convicted and sentenced to death are constitutionally unacceptable."

Since 1976, 464 people have been executed in Texas. During the same period, 11 inmates sentenced to death have been exonerated and freed. Most recently, Anthony Graves was freed after spending 18 years in prison, many of those years on death row, for robbery-murders he did not commit. While defenders of the death penalty argue that such exonerations prove the system works, Green's attorneys contend that luck plays the largest role in helping the innocent escape execution. Some inmates get competent appeals attorneys pro bono. In Graves' case, volunteers from the University of St. Thomas and the University of Houston worked with the Innocence Project to prove his innocence.

According to Green's attorneys, "When the fortuities that lead to the exoneration of every wrongfully convicted and condemned person are taken into account, there is a very strong probability that Texas has executed 12 or more innocent people."

Nationally, according to the Death Penalty Information Center, for every nine people executed, one person is exonerated after being sent to death row. The number of wrongly convicted defendants led former Supreme Court Justice Sandra Day O'Connor to conclude that "if statistics are any indication, the system may well be allowing some innocent defendants to be executed."

It's clear that the Texas capital punishment system is horribly flawed and carries an unacceptably high likelihood that innocent people have been and will be executed for crimes they did not commit. We look forward to the proceedings in Judge Fine's courtroom as a vital step in identifying the problems and crafting safeguards to prevent the ultimate miscarriage of justice.

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