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### Texas judge to hold hearing on death penalty law

Green's attorneys say they plan to bring up the Willingham and Jones cases at the hearing. They claim the state's death penalty procedures violate the Eighth Amendment right to freedom from cruel and unusual punishment because they create a "substantial risk" that innocent people are wrongfully convicted and sentenced to death.

Harris County prosecutors, who unsuccessfully tried to get Fine removed from the case, declined to comment before Monday's hearing. But in a petition filed last month, they asked the Texas Court of Criminal Appeals to stop the hearing, saying Fine doesn't have the authority to declare the state's death penalty law unconstitutional and higher courts, including the U.S. Supreme Court, have previously rejected Eighth Amendment challenges to capital punishment.

Prosecutors said Fine has shown "antagonism against the death penalty" and a jury should decide Green's fate.

The appeals court is dominated by Republicans and led by a chief judge who was disciplined for closing the court promptly at 5 p.m. while a death row inmate tried unsuccessfully to file an appeal hours before he was executed. But it denied the prosecution's motion, saying it couldn't act until Fine ruled.

Anti-death penalty groups have lauded Fine, while those in favor of capital punishment call him misguided.

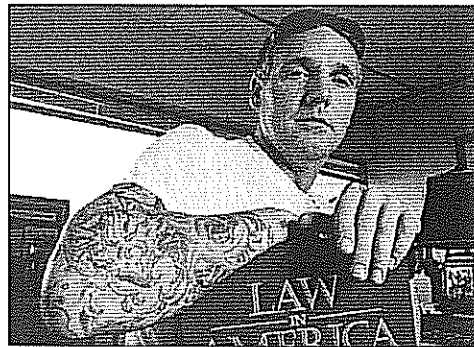
"It's appropriate that a Harris County judge is stepping up and saying we need to take a time out and look at the system," said Scott Cobb, president of the Texas Moratorium Network, a group that advocates for a suspension of executions in the state.

Harris County has sentenced 286 people to death since Texas resumed executions in 1982, and 115 of those have been executed.

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Dudley Sharp, a death penalty expert from Houston who has worked with crime victims'

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FILE - In this Nov. 14, 2008 file photo, then newly elected State District Judge Kevin Fine shows his sleeve of tattoos at his downtown Houston office. In the deeply Republican state that has executed more convicts than any other and the county that has sent the most to death row, an unusual legal proceeding will begin this week. Democratic judge Fine will hold a lengthy hearing which starts Monday Dec. 6, 2010 on the constitutionality of the death penalty in Texas. (AP Photo/Houston Chronicle, Nick de la Torre, File) (Nick De La Torre - AP)

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