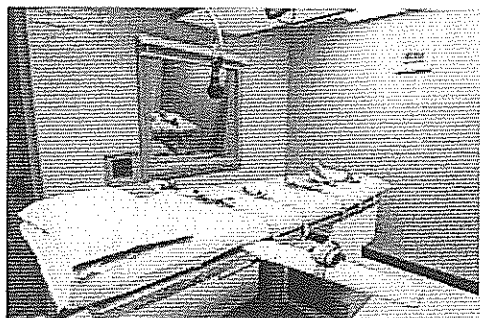


## Texas death penalty hearing starts in Houston court

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AP

By Pat Sullivan, AP

A microphone hangs over the gurney in the Texas death house in Huntsville, Texas, in May 2008.

HOUSTON (AP) — Experts on eyewitness identification, confessions and forensic evidence are among those expected to testify at an unusual hearing on the constitutionality of the death penalty that starts Monday in the Texas county that has sent more convicts to death row than any other.

Harris County Judge Kevin Fine ordered the hearing last spring in response to a routine defense motion that judges typically reject. Fine, who stands out as a Democratic judge in deeply Republican Texas, declined to be interviewed but has indicated he's aware of recent exonerations of death row inmates and his decision in the case will "boil down to whether or not an innocent person has actually been executed."

Defense attorneys who filed the motions said they plan to call legal and academic experts who will detail how flaws in such things as eyewitness identification and confessions have led to wrongful convictions and sent innocent people to death row. The attorneys represent John Edward Green Jr., who is awaiting trial on charges he fatally shot a Houston woman and wounded her sister during a June 2008 robbery. The hearing could last up to two weeks.

Fine originally responded to the motion by declaring the death penalty unconstitutional. The decision surprised many Texans and generated a storm of criticism from Republican Gov. Rick Perry and others. The judge then clarified his ruling, saying the procedures the state follows in getting a death sentence are unconstitutional. Then he rescinded his ruling and ordered the hearing, saying he needed more information before making a final decision.

Fine has said he believes capital punishment is constitutional and the hearing will focus only on the specific issues raised by Green's attorneys.

Still, his actions seem to be in contrast to the beliefs of many Texans who consider the death penalty a fitting punishment for the worst kind of crimes. And, the hearing is being held in Harris County, which includes the state's largest city, Houston, and has sentenced more people to death than any other Texas county — 286 since executions resumed in 1982. One hundred fifteen of those have been executed.

While anti-death penalty groups have lauded Fine, those in favor of capital punishment have called him misguided.

Prosecutors with the Harris County District Attorney's Office unsuccessfully tried to get him removed from the case. While they declined to comment before the hearing, they said in court documents that Fine has shown "antagonism against the death penalty" and they doubted he could be impartial.

Fine stands out among Texas judges: He sports dense tattoos and has said he's a recovering alcoholic and former cocaine user.

Green's attorneys say the hearing is not a referendum on whether Texas should have a death penalty. But they do plan to bring up the cases of Cameron Todd Willingham and Claude Jones, both of whose executions are being questioned.

Willingham was put to death in 2004 for burning down his Corsicana home in 1991 and killing his 2-year-old daughter and 1-year-old twins. His execution is being questioned after several fire experts have found serious fault in the arson findings that led to his conviction.

Jones' 2000 execution is also being questioned after a new DNA test showed a hair that had been the only piece of physical evidence linking him to the crime scene didn't belong to him. Jones was executed for the 1989 killing of a liquor store owner during a robbery in a town north of Houston.

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