

Prosecutors Won't Take Part in Death-Penalty Hearing

Associated Press

HOUSTON—Prosecutors on Monday told a judge presiding over an unusual court hearing on the constitutionality of the death penalty in Texas that they won't participate in the legal proceeding and will "stand mute" during the hearing.

The judge ordered the hearing to go forward, and lawyers for John Edward Green Jr., the Houston man who asked for the proceeding, began calling witnesses.

The attorneys will try to show that the way death-penalty cases are handled in Texas creates a risk that innocent people will be executed. Mr. Green faces a possible death sentence if convicted of fatally shooting a Houston woman during a June 2008 robbery.

The hearing was ordered by Kevin Fine, a state district judge in Harris County who in the spring granted a motion by Mr. Green's attorneys and declared the state's death penalty statute unconstitutional. Under heavy criticism, Judge Fine clarified, then rescinded his ruling and ordered the hearing, saying he needed to hear evidence on the issue.

Experts on eyewitness identification, confessions and forensic evidence are among those expected to testify at the hearing, which could last up to two weeks.

The first witness called was Richard Dieter, executive director of the Death Penalty Information Center, a Washington, D.C., group that has been critical of capital punishment.

Mr. Dieter discussed the 138 exonerations of death-row inmates that have occurred in the U.S. since 1978, including 12 in Texas. He said that for every nine executions that have occurred in the U.S., there has been one exoneration.

Mr. Dieter said his group's review of these exonerations has shown that faulty eyewitness testimony, unreliable informant testimony and false confessions are some of the factors that have contributed to innocent people being wrongfully convicted.

"The system, the number [of exonerations], the fortuity of finding mistakes would lead me to believe there is certainly a risk of executing the innocent and that risk still exists today," he said.

After Mr. Green's attorneys finished questioning Mr. Dieter, Judge Fine asked prosecutor Alan Curry if he had any questions.

"We still respectfully refuse to participate in the proceeding your honor," Mr. Curry said.

Later during the hearing, Judge Fine told Mr. Curry he expected prosecutors to participate.

"I have been instructed by my boss, the district attorney, to stand mute for the remainder of the proceedings," Mr. Curry said, adding he meant no disrespect to Judge Fine or others involved in the hearing.

Before the hearing began, Mr. Curry reiterated objections prosecutors have had to the hearing, saying the issues being debated are settled case law and that some of the issues Mr. Green's attorneys plan to discuss at the hearing, such as crime clearance rates and alleged racial discrimination in how juries are chosen, have no relevance to Mr. Green's case. Judge Fine asked Mr. Curry to submit his objections to the relevancy of some of the issues to be discussed but said the hearing would go forward.