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# Prosecution stands mute at death penalty hearing

By JUAN A. LOZANO Associated Press © 2010 The Associated Press  
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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.

Despite the prosecution's actions, 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 say will try to show that the way death penalty cases are handled in Texas creates a risk that innocent people will be executed. 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 Green's attorneys and declared the state's death penalty statute

unconstitutional. Under heavy criticism, Fine clarified then rescinded his ruling and ordered the hearing, saying he needed to hear evidence on the issue.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 resumes on Tuesday and could last up to two weeks. Green's attorneys called four witnesses on Monday.

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

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.

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

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

Later during the hearing, Fine told 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," Curry said, adding he meant no disrespect to Fine or others involved in the hearing.

Before the hearing began, Curry reiterated objections prosecutors have had to the hearing, saying the issues being debated are settled case law and that some of the issues 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 Green's case. Fine asked Curry to submit his objections to the relevancy of some of the issues to be discussed but said the hearing would go forward.

Prosecutors unsuccessfully tried to get Fine removed from the case, saying he is biased against the death penalty.

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

Also testifying on Monday was Sandra Guerra Thompson, a professor at the University of Houston Law Center and an expert on eyewitness identification. Guerra testified that she believes such identifications can be filled with problems, including witnesses being overconfident in recalling events and witnesses being influenced by a need to help authorities. She was a member of a panel created by the Texas Legislature that earlier this year made recommendations on improving eyewitness identification procedures and allowing more DNA testing to take place after convictions.

If Fine were to rule the state's death penalty statute is unconstitutional, prosecutors have said they would appeal the decision, which would have a good chance of being overturned. The Texas Court of Criminal Appeals, the state's highest criminal court, has previously ruled against similar challenges to the law like the one Green is making.

The hearing is unusual for Texas, a Republican state that has strongly supported capital punishment. 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.

Green's attorneys say they plan to bring up executions that have been recently questioned, including that of Cameron Todd Willingham.

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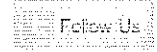
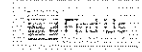
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