

# Historic Death Penalty Hearing Halted

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HOUSTON - Just a few hours ago, the Texas Court of Criminal Appeals put the brakes on a test of the Texas death penalty at the request of the Harris County District Attorney's Office.

The hearing was ordered by Judge Kevin Fine who is considering whether Texas death penalty laws are unconstitutional due to the risk of innocent people being put to death.

This halt comes just hours before Barry Scheck from the Innocence Project was supposed to walk into that courtroom. His group has freed several men who were wrongly convicted. He was at the airport in New York getting ready to board a plane to Houston when we were able to catch him on the phone.

"It's an unfortunate situation because the people of the state of Texas and across the country want to hear the evidence," Scheck said. "It's an important issue and we have a lot of proof we'd like to put before the court that makes our case and we haven't had an opportunity to do so."

The death penalty hearing formed from the capitol murder case of John Edward Green. He is charged in connection to the death of a woman in a 2008 robbery. He was set to go to trial, possibly facing death row, when his lawyers filed a pre-trial motion asking Judge Fine to find the Texas death penalty a violation of Green's civil rights.

Richard Burr, Green's defense attorney, says it's crystal clear: the evidence used against his client is the same evidence that wrongfully convicts innocent people. Greens attorneys point to two Texas men: Cameron Todd Willingham and Claude Jones. Both men were executed, but recently surfaced evidence indicates they may have been wrongfully convicted.

"I think that if the courts stop this from happening, I think there will be a backlash: public backlash that demands something different to happen," Burr says.

FOX 26 legal analyst Chris Tritico says the recent developments don't mean anything as of yet.

"If at the end of the day, the court rules the judge should not have a hearing because the death penalty has already been ruled constitutional, it strikes a big blow right at the knees of the Bill of Rights in my view," Tritico says.

Prosecutors have refused to take part in the hearing and have told the presiding judge the hearing is both unnecessary and inappropriate. They say Green should have a jury trial and due process just like everybody else.

The hearing will be stopped pending legal arguments from both the defense and prosecution. Both parties will have 15 days to respond by drafting legal briefs with their stated positions.

If the Court of Appeals allows the hearing to go forward, then it will go forward as is, but if they deny it? The issue could very well be closed, for now.