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Stay in Texas case continues culture of silence around the death penalty

Posted by James Brockway, Guest Blogger on December 8th, 2010

A hearing to determine the constitutionality of Texas' death penalty was stayed yesterday by the Texas Court of Criminal Appeals. The hearing, which began on Monday in Houston as a pre-trial proceeding in the case *Texas v. Green*, sought to determine whether or not a high probability of wrongful conviction meant that capital punishment violated the Eighth Amendment's prohibition of cruel and unusual punishment.

The case concerns John Edward Green, a Houston man charged with fatally shooting a woman in a 2008 robbery. Because Texas is seeking the death penalty, Mr. Green's attorneys have challenged the constitutionality of the punishment, and Judge Fine has provided the hearing as an opportunity for both sides to plea their case.

Prosecutors have declined the invitation to defend capital punishment, deciding instead to "stand mute." The Harris County District Attorney's office has repeatedly objected to the hearing, arguing that it concerns law which is settled and thus irrelevant to the Green case. They have also challenged Judge Fine's impartiality, and have claimed that the hearing is premature, as the question of sentencing will be relevant only if Mr. Green is convicted. Mr. Green's attorneys have responded to these claims by arguing that the high likelihood of wrongful conviction, combined with the impact of Texas death penalty laws which set an unreasonably high barrier for appeals, make taking the death penalty off the table before trial begins an imperative. The Court of Appeal's stay is meant to provide each side with the opportunity to file briefs arguing whether or not the hearing should occur.

The hearing itself represents a new and important turn in the death penalty debate, as it is the first time a Texas district court judge has heard arguments regarding capital punishment's constitutionality. The defense called on several prominent legal experts who spoke about the risk factors that lead to wrongful conviction, including flawed science and unreliable testimony.

Before the stay was issued, the hearing was meant to feature testimony regarding the cases of Cameron Todd Willingham and Claude Jones, two prisoners who were executed on the basis of evidence which has been undermined. The prosecution's unwillingness to use this hearing to defend the death penalty speaks to their fear that it will not stand up to careful scrutiny. Even if their legal objections are correct, the hearing still represents an opportunity for a much-needed public debate about the problem of wrongful conviction and the legitimacy of capital punishment. If it is true that the death penalty system does not wrongfully convict people, then its proponents should be able to offer evidence to support that claim. If, on the other hand, innocent people are at risk of being executed, this is a fact that cannot be buried. Instead, this problem must be faced full on and should prompt a complete overhaul of the system to eliminate the risk of the wrongful convictions, or better yet, an agreement to move beyond the death penalty in search of more effective alternatives.

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