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Texas and the death penalty

Dennis Coday | Mar. 11, 2010 NCR Today

Judge Kevin Fine of Harris County, Texas, shook the Texas judicial world last week when he declared that the death penalty as applied in Texas is unconstitutional. He was immediately attacked by Texas Governor Rick Perry, Texas Attorney General Greg Abbott and Harris County District Attorney Pat Lykos as partaking in judicial activism.

Harris County sends more inmates to death row than any other county in the nation.

Now news comes [1] that Fine has rescinded that ruling. "Rescinded" may not be the best word to use. He is holding the ruling in abeyance until he hears more arguments on the matter. He has scheduled a hearing on the matter for next month.

Over at the Dallas Morning News [2], editorial writer Colleen McCain Nelson reports that legal scholars have suggested that Fine's on-off ruling could be a strategy for launching a conversation about this issue within the judicial branch.

Fine's efforts, though likely well intentioned, seem to be a muddled mess, McCain Nelson suggests.

Chief Appellate Prosecutor Alan Curry seems to think Fine is wasting people's time. "We believe that the law in this area is well-settled," he told The Associated Press.

I asked David Atwood, founder and director of the Texas Coalition to Abolish the Death Penalty, for an assessment of the situation. Atwood, also a leader in the Texas Pax Christi chapter, says that Fine was attacked by the political and judiciary establishment, because "Fine spoke the unspeakable ... Fine spoke the truth."

"The death penalty," Atwood continues, "was declared unconstitutional by the U.S. Supreme Court in 1972 because it was being applied in an arbitrary and capricious manner. It was declared constitutional again in 1974 after states amended their death penalty laws to make them less arbitrary and capricious. However, it has been very clear to many people in Texas and elsewhere that the death penalty is still applied in an arbitrary, capricious and discriminatory manner.

"Who does and doesn't get the death penalty depends on a variety of factors including the quality of the defendant's attorney, the race of the victim of the crime, politics and where the crime takes place. Most people who end up on death row are poor and could not afford a top quality legal defense. Furthermore, as Judge Fine points out, innocent people have been sent to death row and some undoubtedly have been executed.

"Judge Fine's statement will probably not have an immediate effect on what happens in Texas and elsewhere. Many of the judges in higher courts, including the U.S. Supreme Court, are supportive of the death penalty as it now is applied. However, in the longer term, his statement could be a milestone in ending the death penalty in the United States.

"The reality is that the death penalty can never be 'fixed' so that it is no longer arbitrary and capricious."

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[1] http://www.google.com/hostednews/ap/article/ALeqM5hJjNzsQw2EkiMdsxPajJMR64dMJAD9EBD3982
[2] http://deathpenaltyblog.dallasnews.com/archives/2010/03/judge-who-declared-death-penal.html