Texas defender drew unfair treatment
By Laura Arnold

We all have differing opinions on the death penalty. But we should all agree on one thing: If Texas is going to have a death penalty, the system for administering it must be fair and just, with the convicted given every opportunity under the law to defend themselves.

Execution is too final a punishment for Texans to accept anything less. A recent decision by the Texas Court of Criminal Appeals calls into serious question whether we in Texas are following these high standards of fairness and justice.

At issue is the court's 12-month suspension of David Dow - a University of Houston law professor who has represented more than 100 death row inmates - for missing an appeals filing deadline in the case of Miguel Paredes. Paredes was executed last October.

It's hard to overstate how unusual it is for this court - or any court - to bar a lawyer from arguing before it for such a minor administrative error. Why did the court treat David Dow with an iron hand, especially when it has treated other lawyers accused of much worse misconduct with kid gloves? There appears to be no explanation other than pure retribution.

The Court of Criminal Appeals has clashed with Dow, and other death penalty lawyers, on many issues, both procedural and personal, over the years.

Dow is a zealous advocate for his clients' interests - exactly the type of lawyer you'd want if you were sitting on death row. But to some judges on the court, Dow is little more than a nuisance.

In her dissent on the Dow case, Judge Elsa Alcala suggested that Dow may not have even missed the court's appeal filing deadline in the Paredes case in the first place, as the rule at issue is poorly written and ambiguous. Even if Dow was guilty of a late filing, Alcala deemed Dow's punishment "unreasonable and excessive."

That might even be an understatement, especially when you consider that the Court of Criminal Appeals has withheld punishment for much more serious offenses, including death penalty lawyers who repeatedly fell asleep during trials or who failed to conduct even the most basic investigations in defense of their clients.
Ultimately, this case is about a lot more than one lawyer. It's about ensuring that Texas' system for administering the ultimate punishment is beyond reproach. There is no place for partisan politics or personal vendettas in a forum that presides over life and death.

By suspending Dow, the court is sidelining one of the most talented death penalty lawyers in the country - even as Dow is representing at least a dozen Texas death row inmates who may need to appear before this court. And, as Judge Alcala correctly noted, the court's punishment could have "a chilling effect on attorneys who might otherwise be willing to represent capital murder defendants who are facing execution and are in need of competent counsel."

Excellent death penalty lawyers are not easy to find. A death penalty defense is a largely thankless job, often taken on for little or no money. But these lawyers are absolutely essential for a fair and just system of capital punishment.

No one can dispute that, even with the best of intentions and procedural safeguards, our criminal justice system makes mistakes. In Texas, innocent men such as Anthony Graves and Ernest Ray Willis have been fully exonerated and freed from death row because their lawyers discovered new evidence, lawyer incompetence or police or prosecutorial misconduct. These lawyers include David Dow, who was part of Anthony Graves' defense team.

Texans deserve a fair and just criminal justice system. When the court of last resort in our state needlessly and unjustifiably sidelines a key participant in that process, we all lose.

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