

Texas needs agency for indigent capital murder defendants

DATE: November 5, 2006

PAGE: G02

On Saturday we offered one solution for fixing the state's broken system regarding death penalty appeals. We urged lawmakers to either put the Texas Court of Criminal Appeals out of business or, at the very least, require the court to fulfill its obligation to ensure that the condemned receive competent legal help.

But there is another problem: what to do about substandard legal work by too many court-appointed lawyers representing indigent death penalty inmates in their last chance in state court to prove their innocence. The solution we recommend is for the Legislature to establish and finance a separate agency to deal solely with capital murder cases for poor defendants.

Some Texas lawyers file shoddy writs of habeas corpus, which are key to ensuring that those convicted of capital murder have a fair chance to prove their innocence.

Writs have proved invaluable in helping determine who belongs on death row and who doesn't. They ask the courts to re-examine the circumstances and legality of an inmate's confinement. Certainly many of those condemned to die were guilty. But there are people sent to death row primarily because certain evidence or facts were maliciously or accidentally omitted at their trials. So judges and defense lawyers must take writs seriously.

We know that pro-death penalty politics wins votes in Texas. But there should be bipartisan concern over Texas' broken system. Proper writs eliminate doubt regarding a defendant's guilt and can free those who are innocent. That is not happening in many instances for Texas death row inmates.

In a two-day series published last week, American-Statesman writer Chuck Lindell reported on the magnitude of the problem. The work of more than a dozen lawyers was examined and the conclusions were shocking. Some attorneys who represented death row inmates in habeas appeals simply copied from their previous appeals or from other lawyers, whether the facts applied to their current cases or not. Others recycled claims that have been repeatedly denied, ignoring obvious avenues of investigation. The Texas Court of Criminal Appeals mostly accepted their shoddy work.

The system is lacking for a variety of reasons, including an indifferent criminal appeals court and state bar that haven't curbed lawyers who are doing substandard work. The system lacks accountability because it's nearly impossible for incompetent lawyers (appointed by the court) to be fired. But the state also bears responsibility for a court-appointed system that allocates just \$100 an hour for court-appointed lawyers and caps costs for habeas work at \$25,000. Those legal fees also must pay for private investigators who are essential in building cases that stand up in court.

The investment by the state, while substantial, is too little for capital murder appeals. The solution doesn't necessarily mean that the Legislature must appropriate a lot more money, but it should find a better way of using the money it already is spending, such as establishing a statewide defender's office that is responsible for capital cases from start to finish.

That office could be financed by a combination of state money now going to court-appointed lawyers handling death row habeas appeals and county dollars that fund lawyers for indigent capital murder defendants for their initial trials. Such an agency could hire lawyers who are experienced and competent in handling death row cases. It isn't a perfect solution, but far better than what is in place now.

The public and state leaders should be concerned about whether convicted capital murderers are being executed for the right reason - because they are guilty - and not because their lawyers bungled the job. On statesman.com: Read Chuck Lindell's report on sloppy writs of appeal at statesman.com/habeas.

Copyright (c) 2006 Austin American-Statesman