

# Legislature should starve appeals court

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At some point, the Texas Legislature must weigh whether it should continue directing tens of millions of public dollars to a court that is failing in its most important duty. Lawmakers budgeted nearly \$28 million for the Texas Court of Criminal Appeals for the current two-year cycle.

Legislators should put the criminal appeals court out of business because the court has failed in its obligation to ensure that the condemned received competent legal help.

Texas is operating under an antiquated system that establishes two courts to handle appeals. The State Supreme Court deals with civil matters and the Court of Criminal Appeals handles criminal appeals. It would take a state constitutional amendment to replace the two courts with one supreme court for civil and criminal appeals. The Legislature, however, does have the power to yank the criminal court's budget. It should use that authority to force the court to do its job or put it out of business.

Generally, the all-Republican Texas Supreme Court is widely respected. But the Court of Criminal Appeals - also composed of nine elected GOP judges - has embarrassed the state with a series of bad rulings, many of them regarding the death penalty. Recently, the conservative leaning U.S. Supreme Court signaled its frustration with Texas' criminal appeals court when it agreed to hear three Texas death penalty cases in its next term.

By now, many Texans know about some of the rulings that made national news, including the infamous sleeping lawyer case. In that case, the criminal appeals court judges saw nothing wrong with a defense lawyer who slept through key portions of his client's capital murder trial.

The same court said OK to prosecutors who hid evidence from defense lawyers in several capital murder cases involving indigent defendants.

And it gave thumbs up to racial gerrymandering of a jury by Dallas prosecutors years ago in another capital murder case.

This week, we learned about more disturbing practices that probably are costing people their lives. For years, the court has permitted lawyers to submit sloppy, erroneous and inferior work in death penalty appeals. In a system in which almost anything passes as a writ of habeas corpus to appeal a death sentence, it is very possible that innocent people have been - and will be - put to death.

American-Statesman staff writer Chuck Lindell reported on a broken system that permits lawyers appointed to handle appeals for inmates on death row to submit shoddy, erroneous and incomplete work. That is outrageous in cases involving the ultimate and irreversible punishment: death.

In some cases, Lindell identified lawyers who submitted writs that fell far short of professional standards, collecting thousands of dollars from taxpayers:

- In a 2003 appeal, Greenville lawyer Toby Wilkinson filed a nearly incoherent collection of statements lifted almost verbatim from his death row client's letters. His client, Daniel Acker, was sentenced to death for the 2000 killing of his girlfriend.
- Dick Wheelan of Houston has submitted a number of habeas writs copied largely verbatim from a death row inmate's direct appeal, even though such claims cannot be considered in a habeas writ.
- The State Bar of Texas bears much of the blame for permitting those attorneys to continue practicing in the complex area of habeas death penalty appeals. The bar has been slow to curb incompetent lawyers cashing in on indigent clients.

But the state Court of Criminal Appeals is the ultimate authority in death penalty appeals cases. It regulates the list of lawyers who are deemed competent to represent poor defendants. Also, why are the judges accepting lawyers' shoddy, inferior work in cases involving life and death?

A high school teacher would fail students who plagiarized their work.

Continuing to invest in a court that is indifferent to justice is a waste of taxpayers' money. Get rid of it.

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