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A troubling death-row case and a divided court

Even those people who believe in their hearts that capital punishment is appropriate for the worst offenders should be troubled by a death penalty case from Tennessee just decided by the Sixth Circuit Court of Appeals.

The decision and the dissent issued last week in the case of Paul Gregory House were diametrically opposed - so much so that one wonders if the judges considered the same facts. The judicial divide was also totally partisan, with eight Republican appointees voting for execution, six Democratic appointees voting that the defendant is innocent, and one separate dissenter calling for a new trial.

House was convicted of the 1985 rape and murder of Carolyn Muncey in Union County. Prosecutors offered as evidence Mrs. Muncey's garments, which bore semen that matched House's blood type.

Since then, DNA testing, which was unavailable at the time of the trial, determined that the semen was that of Mrs. Muncey's husband, Hubert. At a subsequent federal court hearing in the case, six witnesses implicated Hubert Muncey, including two residents who said that he admitted to killing his wife accidentally while beating her.

The judges in the majority concluded that the lack of rape evidence doesn't mean that House didn't abduct and murder the victim. The dissent, written by Judge Gil Merritt of Nashville, characterized this as a case where investigators, prosecutors and reviewers have closed ranks and refused to admit error.

What makes this decision so remarkable is that it doesn't turn on a narrow question of law, but on House's actual guilt or innocence. The New York Times' story last week quoted Hofstra University law professor Eric Freedman as saying the House case was "unprecedented."

House is hardly the first death row inmate to claim innocence. Yet numerous federal judges, including Justice Sandra Day O'Connor, have admitted the likelihood that this nation's system of justice is allowing innocent people to be executed.

This state has executed just one person since the death penalty was reinstated. But many other cases are in the pipeline, and as the ultimate punishment approaches in each case, the questions of legality, certainty and morality must be more intense.

This page opposes the death penalty on moral grounds. The House case, however, presents many more reasons to stop this execution.

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