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EDITORIAL

An Unfit Judge

Judge Sharon Keller, the Texas appellate court judge who closed the clerk's office before a death row inmate could file a last-minute appeal, is fighting to keep her job. At a hearing on Wednesday, she said in a crowded courtroom that if she had it to do again, she would do the same thing. That testimony is further proof of why Judge Keller needs to be removed from the bench.

On Sept. 25, 2007, Michael Richard's lawyers called the court clerk's office to say they were running late in delivering the papers for his appeal. The Supreme Court had unexpectedly issued an order in another death penalty case that they believed provided grounds for putting off his execution. When the request to keep the office open reached Judge Keller, she insisted it would close promptly at 5 p.m. The appeal was not filed, and Mr. Richard was executed hours later.

Judge Keller is now facing five counts of judicial misconduct and a possible recommendation that the state judicial system remove her from the bench.

In court this week, Judge Keller lashed out at the condemned man's lawyers, blaming them for the controversy. She argued that Mr. Richard could still have filed his appeal by seeking out another judge, but that misses the point. She did not follow appropriate procedures. And clearly, under any interpretation of the rules, given that a life lay in the balance, the clerk's office should have stayed open.

Judge Keller's profound lack of appreciation for the seriousness of taking a life — and the obligations it places on the state — is similar to the disturbing dissent that Justices Antonin Scalia and Clarence Thomas delivered this week in the Troy Davis case. They suggested there was no constitutional problem with executing a man who could prove he was innocent.

We believe the death penalty is in all cases wrong. But people who support it should still insist that it be carried out only after a prisoner has been given every reasonable chance to make his case. Judge Keller's callous indifference in a case where the stakes could not have been higher makes her unfit for office.

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