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DEATH PENALTY INFORMATION CENTER

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Prosecutor and Judge Now Agree Death Sentence Inappropriate

Older Ohio Cases Were Judged by Different Standards

In a rare alignment of typical adversaries, the former prosecutor and a presiding judge from a defendant's trial agree with the current defense attorneys that John Eley's death sentence is inappropriate and unnecessary. Nevertheless, he remains on Ohio's death row and is facing execution in a few weeks. A recommendation to the governor regarding clemency is expected from the Ohio Parole Board on June 20.

Gary Van Brocklin, the former prosecutor who helped place Eley on death row, sent a video statement to Ohio's Parole Board urging them to recommend clemency and a reduction in sentence because he no longer considered the case appropriate for the death penalty. "It wasn't in the more heinous nature of cases that now receive the death penalty," he stated. In a follow-up statement to the Board he said, "I spoke on behalf of Mr. Eley because it is the right thing to do. I am a staunch conservative and had no problem asking for the death penalty in a proper case. At the time [of the original trial] I believed it to be the proper case."

Similarly, one of the three judges who sentenced Eley to death is now asking for clemency. Judge Peter Economus, who currently serves on the federal bench, wrote to the Parole Board, saying he originally agreed with the death sentence only because Eley's attorneys presented little mitigating evidence: "If I had been presented the additional mitigating evidence outlined in the clemency petition at the time of the trial, especially evidence of Mr. Eley's low intellectual

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functioning, his impoverished childhood, his significant alcohol and substance abuse, and his probable brain impairment, I would have voted for a sentence less than death." Judge Economus ended his letter by stating, "Frankly, I am surprised that [Eley's] death sentence was not modified by the courts who have reviewed this case over the years."

John Eley has been on death row for 25 years. He is now 63 years old. His appellate attorney described him to the Parole Board as an intellectually disabled, easily manipulated man who was led by another defendant to murder a shopkeeper in 1986. Although many changes have been and continue to be made in Ohio's criminal justice system in the decades since that crime, older cases like Eley's raise the question of whether the changes may be coming too late.

In the 1980s and 1990s, Ohio often sentenced 15-20 people to death in a single year. Last year, only 2 people received death sentences in Ohio, as prosecutors and jurors have become much more selective in the use of capital punishment. Today, defense attorneys must have considerable experience before being assigned a capital case, and they will almost always seek additional resources to thoroughly investigate their client's social history. Mental disabilities are a key area for research, especially given the U.S. Supreme Court's ruling in 2002 exempting those with mental retardation from the death penalty.

The Chief Justice of Ohio's Supreme Court has initiated a study of state's death penalty to determine if more changes need to be made. But even as reforms are considered, Ohio has proceeded with executions, setting dates almost every month into 2014. Recently, the governor, John Kasich, stopped an execution just hours before it was to be carried out to allow a hearing on the inmate's mental competency. Following testimony by a number of psychiatrists, the judge declared Abdul Awkal ineligible for execution. Ohio's Parole Board had voted 8-1 to allow the execution to go forward.

Eley's attorneys maintain that his mental illness and borderline intellectual functioning have contributed to his refusal to cooperate with mental health experts, and he has never been fully diagnosed or evaluated. At the time of his trial, Eley refused to testify against his co-defendant, who is now eligible for release from prison. Eley's scheduled execution date is July 26.

For further information about John Eley's case, contact his attorney Vicki Werneke, Office of the Federal Public Defender, 216-522-4856. For further information about Ohio's death penalty, contact Kevin Werner, Ohioans to Stop Executions, 614-560-0654. For information on the death penalty nationally, contact Richard Dieter, Executive Director of the Death Penalty Information Center, 202-289-2275.