Death Penalty Proponent Turned Opponent

By Teresa Cajot

In recent years Paul Pfeifer, the senior member of the Ohio Supreme Court, has made no secret of the fact that he opposes the death penalty. In fact, in December he presented testimony in support of a Democrat-sponsored bill that would abolish the state’s death penalty law. That in itself might not seem so strange but the fact of the matter is, 30 years ago, Pfeifer was actually involved in the writing of the law that he is now fighting against.

Since his days as a senator, Pfeifer’s opinion on the matter has obviously changed and he is entitled to that. However, some county prosecutors have suggested that due to Pfeifer’s outspoken views on the matter, he should not continue to rule on death penalty cases. According to Hamilton County prosecutor Joe Deters, Pfeifer’s words have given “rise to a credible inference that he cannot be fair to both sides.”

When the US Supreme Court ruled that the death penalty was unconstitutional in 1972, Ohio and other states rewrote their laws. Ultimately, Ohio successfully rewrote its law when Pfeifer was the chairman of the Senate Judiciary Committee. The law has not been successfully challenged since it was enacted in 1981. Today the state has 148 inmates on death row, with 28 of them in Hamilton County. The state has placed a temporary stay on all executions while the state’s lethal injection processes are examined.

Democrats are hoping to gain support for their bill but at this point, its passage seems unlikely. However, there is no question that they have the unlikely support of Pfeifer, a Republican. Pfeifer, who joined the court in 1992, has long demonstrated doubts about the death penalty. In 1994, he dissented on a vote upholding John Simko’s death sentence for the shooting death of his girlfriend, writing that the death penalty should be “reserved for those committing what the state views as the most heinous of murders.” In 2001 he requested a review of the law, claiming that prosecutors were too quick to seek the death penalty in cases where such punishment was unwarranted. Early last year, Pfeifer even went so far as to call on Ohio Governor John Kasich to clear death row.

However, Pfeifer’s rulings are far from unbalanced. He has upheld death penalty convictions in a total of five cases since 2001 and he also upheld four other death penalty sentences in which he disagreed on certain aspects of the decision. In fact, just in December he established a date for the execution of a man who raped and murdered a three-year-old girl.

“I know the difference between advocating for a change in the law and applying the law as it exists,” said Pfeifer, pointing out that judges do in fact have the ability to propose law changes. Furthermore, he insists that legal changes brought on in 2005 have actually removed the need for the death penalty. The state initially offered the option of life without parole rather than execution in 1996. In 2005, the law was adjusted, making it even easier to assign a life sentence while bypassing the death penalty charges.

Pfeifer joins a list of death penalty supporters who have changed over to the opposing side, including Don Heller of California who was involved in the development of a 1978 ballot initiative that established the state’s death penalty law. Rudy Gerber, who was involved in the writing of Arizona’s death penalty law, now represents death row defendants in the state. Likewise, retired Chief Justice Gerald Kogan of the Florida Supreme Court changed his views on the death penalty after prosecuting death penalty cases as a young legal professional.