



**Hannah**  
CAPITOL CONNECTION  
*"The Unmatched Leader of Statehouse News,  
Information & Research Since 1986"*

### **Pfeifer Brings Case against Capital Punishment to Statehouse, Calls Execution 'Death Lottery'**

The drive to abolish the death penalty in Ohio amassed a large crowd of proponents at the Statehouse Wednesday -- none more eminent than the state's longest sitting Supreme Court justice, Paul Pfeifer. He offered a long list of reasons why the General Assembly should repeal the statute he helped write long ago as a state legislator, calling the geographic inequity of capital sentences a "death lottery."

Fellow supporters of HB160 (Celeste-Antonio) included legal experts, exonerated death row survivors, families of murder victims and others, who pressed legal, ethical, financial and religious arguments against state executions. (See bill report for the House Criminal Justice Committee.)

Pfeifer said the law he and former Senate President Richard Finan pushed through in 1981 was intended as a "limited, narrowly tailored" penalty for truly the "worst-of-the-worst" homicides, which assumed careful premeditation.

"The statute does not work the way we expected," he said. "What has unfolded is an application that is hit-or-miss depending on where you committed the crime and the attitude of the prosecutor in that county."

The state has been so insensible to that fact, argued Pfeifer, that he discovered many years later as a Supreme Court justice that authorities were not enforcing a key section of the law requiring individual counties to report death sentences.

"That was a long-forgotten provision," he said of the state of affairs when Ohio resumed executions in 1999. Pfeifer said he turned to his boss, the late Chief Justice Tom Moyer. "He was stunned to learn there was such a requirement."

Since reporting commenced in 2000, Hamilton and Trumbull counties have led the state in the relative number of death sentences, noted Pfeifer, calling their respective prosecutors "champions of the death penalty."

Hamilton County Prosecutor Joe Deters and Trumbull County Prosecutor Dennis Watkins currently sit on Chief Justice Maureen O'Connor's Joint Task Force to Review the Administration of Ohio's Death Penalty. Watkins has argued, however, that instead of geographic inequities based on proximately similar facts, capital murder outcomes vary based on demographic and socioeconomic differences in individual counties. (See *The Hannah Report*, 11/3/11.)

Pfeifer also attacked claims around deterrence since executions resumed. "If you look at the data then, and you look at the data now, you certainly can't make the argument that it is a deterrent," he observed, saying the previous use of the electric chair might actually have given assailants pause. "If we're going to have the death penalty, it ought to be unpleasant for everyone."

He even suggested in some cases that a person might feel death by lethal injection is preferable to life in prison without possibility of parole, which was not available when he wrote the original law.

Though Pfeifer insisted his new-found argument against the death penalty is not "philosophical or religious," he suggested in response to Rep. Joe Uecker (R-Loveland) that "the views of society have changed." He said if you talk to people privately, including many in the criminal justice system all the way to the governor's office, they will tell you administering the death penalty is a "burden" they would sooner do without.

"Gov. Voinovich, I know, breathed a sigh of relief when he made it out the door" without having to impose the death penalty, Pfeifer said.

Rep. Ron Young (R-Leroy), the only other legislator to ask questions -- confining them to Pfeifer -- suggested questions of innocence and fairness are such a moving target that if Ohio were to reduce punishment for premeditated murder to life in prison without possibility of parole, people would come to question that as well.

"By golly, this is worse than the death penalty ever was," they would say, Young argued. "The person could be innocent -- they found someone 10 years ago who was innocent."

Pfeifer maintained that the range of problems in administering the death penalty, in his view, override those and other concerns.

"The death penalty in Ohio has become what I call a death lottery ... a bad gamble. That is really not how our justice system is supposed to work."

Pfeifer anticipated the testimony of the dozen and a half witnesses to follow, who would tell of withheld evidence, inordinate costs, gaping criminal justice needs in other areas, and moral and religious convictions.

"I would ask each of you as you go home on your holiday vacation ... what purpose does a death sentence serve?"

Committee Chairman Lynn Slaby (R-Copley) said after committee that the vote is still out on HB160's future.

"I will be talking with committee members to see how they want to proceed," Slaby said, noting, however, that his own convictions are firmly established. "I would still be in favor of the death penalty."

Story originally published in *The Hannah Report* on December 14, 2011. Copyright 2011 Hannah News Service, Inc.

© Copyright 1986 - 2011 Hannah News Service, Inc. Columbus, Ohio. All Rights Reserved.

THE HANNAH COLLECTION  
Capitol Connection | Hannah Report | ActionTRACK™  
Ohio News Wire | The Complete Statehouse | State Health Clips  
21 West Broad Street, Suite 1000 (10th Floor) Columbus, OH 43215  
614.227.5820 phone - 614.228.5897 fax

Founding Member of  
 NOLA  
National Online Legislative Associates