

# URGENT ACTION

## PROSECUTOR AND JUDGE OPPOSE OHIO EXECUTION

**John Eley, aged 63, is due to be executed in the US state of Ohio on 26 July for a murder committed in 1986. The prosecutor who obtained the death sentence, one of the judges who passed it, and the detective who obtained Eley's confession, oppose his execution.**

Ihsan Aydah was shot on 26 August 1986 during a robbery of his store in Youngstown, Ohio, and died the following day. **John Jeffrey Eley** was arrested on 29 August and confessed to the shooting. The robbery had apparently been the idea of John Eley's acquaintance, Melvin Green, who provided the gun. Eley agreed to go into the shop while Green waited outside because Ihsan Aydah knew Melvin Green's face and therefore could identify him. After Ihsan Aydah was shot, Melvin Green came into the shop, took money from the cash register and a wallet from the fatally wounded store-owner and left with Eley. The prosecutor offered John Eley a plea bargain – a plea of guilty to manslaughter and a six-year prison term – in return for his testimony against Melvin Green who was suspected of involvement in other crimes. John Eley refused to testify against Green, waived his right to a jury trial and was tried before a three-judge panel. He was convicted, and after a sentencing in July 1987, condemned to death.

In June 2012, one of the trial judges – now a US federal judge – wrote to the Ohio authorities to urge clemency for John Eley. He said that he had agreed to the death sentence in 1987 because the defence lawyers had failed to present “any substantive mitigating evidence” for the judges to weigh against the aggravating circumstances. The judge said that if the mitigating evidence he had now seen had been presented at the trial – “especially evidence of Mr Eley's low intellectual functioning, his impoverished childhood, his significant alcohol and substance abuse, and his possible brain impairment” – he would have voted for a sentence “less than death”. In addition, the trial prosecutor, who describes himself as a “staunch conservative” who had “no problem asking for the death penalty in a proper case”, has also urged clemency, stating that Eley's crime was not the worst sort of crime for which the death penalty should be reserved. He has told the parole board that “at the time I was upset with Mr Eley” for his refusal to testify against Green and “proceeded to trial with a resulting death sentence”. The retired detective who obtained the confession from John Eley has also said that he supports clemency.

An expert on intellectual disability has concluded that John Eley meets the criteria for “mental retardation”, which if accepted by the courts (it is being litigated) would render his execution unconstitutional in the USA. There is also evidence that John Eley suffers from mental illness and that he may lack a rational understanding of his situation.

### **Please write immediately, in English or your own language:**

- Explaining that you are not seeking to excuse the murder of Ihsan Aydah or to downplay the suffering caused;
- Expressing concern that John Eley was sentenced to death by judges who had not been presented with the mitigation evidence that was available, and that one of them, and the prosecutor, oppose this execution;
- Noting expert evidence that John Eley has “mental retardation” and possible serious mental illness;
- Opposing the execution of John Eley and calling on the governor to grant him clemency.

### **PLEASE SEND APPEALS BEFORE 26 JULY 2012 TO:**

Governor of Ohio, John Kasich

Riffe Center, 30th Floor, 77 South High Street, Columbus, OH 43215-6117, USA

Fax: +1 614 466 9354

Email: kim.kutschbach@governor.ohio.gov (governor's Deputy Legal Counsel, adviser on clemency, please ask for your email to be forwarded)

**Salutation: Dear Governor**

You may also wish to sign a petition at: [http://salsa.democracyninaction.org/o/206/p/dia/action/public/?action\\_KEY=10906](http://salsa.democracyninaction.org/o/206/p/dia/action/public/?action_KEY=10906)

Send copies of appeals to diplomatic representatives accredited to your country.

Please check with your section office if sending appeals after the above date.

**AMNESTY  
INTERNATIONAL**



# URGENT ACTION

## PROSECUTOR AND JUDGE OPPOSE OHIO EXECUTION

### ADDITIONAL INFORMATION

On 20 June 2012, the Ohio parole board announced that it had voted 5-3 against recommending the governor to commute John Eley's death sentence. This decision is not binding on the governor. The three board members who voted in favour of clemency did so on the grounds of a combination of factors, including the opposition to the execution of the former officials involved in the case; evidence that without the influence of Melvin Green, who was acquitted in the case, "Eley would not have committed the crime on his own"; if John Eley had testified against Green, the prosecution would not have pursued the death penalty; that whether or not his intellectual disability rises to the level of "mental retardation" that would render his execution unconstitutional, John Eley "is intellectually challenged" and this "may have been a factor in the crime", including being led into it, and in his response to his situation since being arrested (which has included refusing to meet with mental health experts); and that the case is not one of those for which the death penalty is supposedly reserved in the USA.

When a three-judge panel of the US Court of Appeals for the Sixth Circuit upheld John Eley's death sentence in 2010, one of the judges dissented. He argued that John Eley's legal representation at trial had been constitutionally defective because of his lawyer's failure to investigate mitigating evidence. The judge argued that there was a reasonable probability that if they had conducted a proper investigation, "the sentencer would have concluded that [Eley] should not have been sentenced to death". As described above, and to the parole board, one of the sentencing judges has indeed now said that he would not have voted for death if he had been presented with the mitigating evidence that has been investigated and presented on appeal.

Ohio has become one of the USA's leading death penalty states, having carried out eight per cent of US executions in the past decade (45 out of 551 since January 2002). This has happened at a time when the country appears to be turning against the death penalty. In 2012, Connecticut became the fourth US state in five years to legislate to abolish capital punishment – after New Jersey (2007), New Mexico (2009) and Illinois (2010) – in addition to the demise of the death penalty in New York State. There has been a two-thirds reduction in annual death sentences in the USA since the mid-1990s, a halving in the annual judicial death toll since 1999, and the removal by the US Supreme Court of children (2005) and people with "mental retardation" (2002) from the reach of the executioner. In 2011, the Oregon governor imposed a moratorium on executions, and some 800,000 citizens in California – the state which accounts for one in five of the USA's death row inmates – have endorsed putting abolition to the popular vote. As a result the choice to repeal the death penalty will be on the ballot for California voters at the general election on 6 November 2012.

In January 2011, Senior Ohio Supreme Court Justice Paul Pfeifer, who when he was a state legislator was a co-author of Ohio's capital statute enacted in 1981, wrote: "I helped craft the law, and I have helped enforce it. From my rather unique perspective, I have come to the conclusion that we are not well served by our ongoing attachment to capital punishment... I ask: do we want our state government – and thus, by extension, all of us – to be in the business of taking lives in what amounts to a death lottery? I can't imagine that's something about which most of us feel comfortable. And, thus, I believe the time has come to abolish the death penalty in Ohio". The Chief Justice of the Ohio Supreme Court has now ordered a task force convened to examine Ohio's capital justice system. The task force consists of judges, prosecutors, defence lawyers, legislators, law professors, and law enforcement officials. It is expected to produce its final report in 2013.

Amnesty International opposes the death penalty in all cases, unconditionally. There have been 1300 executions in the USA since judicial killing resumed there in 1977, including 45 in Ohio. There have been 23 executions so far in 2012, one in Ohio.

Name: John Jeffrey Eley  
Gender m/f: m

UA: 186/12 Index: AMR 51/053/2012 Issue Date: 02 July 2012