



Taking Death off the Table In the Land of Enchantment

Lessons on Repeal From the Legal and Grassroots Communities

On April 15, 2009, the Roman Coliseum lit up in honor of New Mexico's repeal of the death penalty. The event was an overwhelming culmination to the long fight by a broad-based, grassroots coalition of activists, some of whom attended the event with tears in their eyes. After trying for more than a decade, the New Mexico Coalition to Repeal the Death Penalty (NM Repeal)¹ succeeded in March when Gov. Bill Richardson signed the legislation to replace the state's death penalty with a maximum penalty of life without parole.

A 12-Year Journey

Advocates for repealing capital punishment raise many arguments: it is racially and economically discriminatory; the process has condemned the innocent; and execution is falsely labeled as a deterrent to committing murder and a source of healing for victims' families. However, as states increasingly grapple with balancing their budgets, the tipping point for many legislators may be that capital punishment is expensive. New Mexico repeal activists

began their campaign 12 years ago by proposing a bill to study the costs of capital punishment in the state. Instead, state Rep. Gail Chasey agreed to sponsor a full repeal bill.

As the years passed, the bill crept along, each session gaining more votes and co-sponsors and making slow, but consistent progress through committees. In 2005 the bill was proposed with 34 co-sponsors and made it to a 38-31 House floor vote. It passed the Senate Rules Committee 4-2, but died in the Senate Judiciary Committee on a 5-4 vote. As well as death penalty repeal legislation, Rep. Chasey sponsored additional legislation as part of the Victims' Families First campaign (HB577-Murder Victims' Children College Tuition and HB578-Employee Leave for Certain Crime Victims).

Two years later, in 2007, repeal passed the House floor with bi-partisan support on a 41-28 vote. In the Senate, an amended version of HB190 passed the Public Affairs Committee on a 5-2 vote, but did not pass out of the Senate Judiciary Committee. Legislation to support victims of crime was again introduced.

Finally, in 2009, all the various influences seemed to finally come together. This year, for example, with the current economy, expense information appeared to carry more weight than in years past. According to the Public Defender's Office in New Mexico, "The abolition of the death penalty would save New Mexico several million dollars each year. The costs of the death penalty are borne systematically, impacting the Public Defender Department, the Attorney General's Office, the various district attorney offices, and the trial and the appellate courts."²

Finances, however, were only one reason the New Mexico Legislature and Gov. Richardson felt it was time to repeal a policy that had cost the state so much. Richardson, who had long been a proponent of the death penalty, early in the session encouraged members of the legislature to

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keep their minds open. “Six years ago, when I took office as governor of the state of New Mexico, I started to challenge my own thinking on the death penalty,” he reminded them. As the governor received more information, he finally decided to sign the repeal bill, concluding, “I do not have confidence in the criminal justice system as it currently operates to be the final arbiter when it comes to who lives and who dies for their crime. If the state is going to undertake this awesome responsibility, the system to impose this ultimate penalty must be perfect and can never be wrong.”³

On March 18, 2009, the governor signed the legislation repealing the death penalty. And in doing so, New Mexico became one of 15 states to turn away from capital punishment, and the second state (along with New Jersey) to repeal the death penalty since the U.S. Supreme Court decision in 1976 that reinstated it.

According to the National Coalition Against the Death Penalty,⁴ as of March 2009, 35 states still impose the death penalty. New Mexico’s recent repeal of the death penalty allows for examination of a successful strategy for repeal, which required the efforts of activists from a coalition that included grassroots and grass-tops communities, victims’ families, lawyers, community-based organizations, and faith-based groups. The effective campaign of NM Repeal demonstrates how activists elsewhere can move their states into the “no death penalty” column.

Moving to Action

How does a nation move from one that seeks revenge and retribution to one that offers alternatives to the death penalty? NM Repeal got it right with a multi-pronged approach that involved educating the public, educating the legislature, and introducing companion bills that repealed the death penalty and provided for increased services for the families of victims.

Repeal did not happen overnight. Continuity was a critical component of the effort. One vital and key factor was Rep. Chasey, who was willing to spend political capital on an issue about which she felt compassion and upon which she was compelled to act. Chasey became involved after hearing a presentation from

Association (NMCDDA)⁹ and a murder victim’s family member, staffed both NMCDDA and the repeal coalition during its early years.

It also took another important piece — compromise — to get legislators to sign on to the bill. Rep. Chasey recognized that replacing the death penalty with a

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— New Mexico Gov. Bill Richardson

members of NM Repeal, including family members of murder victims, at a state legislative interim committee hearing in the summer of 1997. Although the “enormous cost” of capital prosecutions was one compelling reason for her to oppose it, she identified at that first hearing that the wishes of family survivors were also key. “The families asked us to stop focusing on the murderers. They asked us to focus on their loved ones and the needs of their families,” Chasey explained.⁶ “Murder Victims Families for Reconciliation⁷ made clear that they needed justice and desired public safety, but they didn’t want a lengthy judicial process ending in another death.”

A second important resource for continuity was that NM Repeal was able to obtain grants from national organizations to supplement local funding for a paid staff and office. Pat Tyrrell noted that the task was beyond the efforts of committed volunteers, and having a paid director and office gave the movement “legitimacy and structure.”⁸ Cathy Ansheles, the executive director of the New Mexico Criminal Defense Lawyers

sentence of life without parole was necessary to move the bill forward. According to Chasey, “For all practical purposes, those convicted and sentenced to life in New Mexico will often be in prison much longer than 30 years because of consecutive sentences on other charges, but now we have a true LWOP statute,”¹⁰ which she identified as an essential component for passage.

Companion bills focused on redirecting resources from capital punishment to victims’ assistance were also significant. One bill would have allocated funds to assist the families of murder victims with counseling, funeral, and related expenses; the other provided for employment leave for crime victims for such purposes as attending court or meeting with investigators. Those bills did not pass in 2009, but repeal advocates vow to continue pressing forward with them in the legislative session ahead.

The ability to build consensus on an issue as controversial as the death penalty also took luck, skill, and strategic thought with a multi-level strategy. An example comes from the experience of one of NM Repeal’s thousands of volunteers. Kathleen Bowman, the director of the Navajo Public Defender’s Office, lost three family members to murder. She spoke tirelessly at community functions, church events, and in schools over the past 10 years. Bowman emphasized that she constantly reminded herself, “The thing is to educate people on all the issues involving the death penalty.”¹¹ These efforts at public education across the Land of Enchantment over the span of a dozen years were successful. A poll conducted in December 2008 found that 64 percent of New Mexicans supported repeal.

States Without the Death Penalty: Alaska, Hawaii, Iowa, Maine, Massachusetts, Michigan, Minnesota, New Jersey, New Mexico, New York, North Dakota, Rhode Island, Vermont, West Virginia, Wisconsin. *Also:* District of Columbia and Puerto Rico.

States With the Death Penalty: Alabama, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Idaho, Indiana, Illinois, Kansas, Kentucky, Louisiana, Maryland, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, Washington, Wyoming.⁵

Community outreach was constant, and included workshops, study groups, petitions, and sign-on letters. Chief among the persuaders was Juan Melendez, who spent 18 years on death row in Florida before he was exonerated. Likewise, faith leaders of all denominations, and in particular Roman Catholic bishops, nuns, priests, and lay leaders, reminded their congregants of their faith's position on the issue. Subsequently, NM Repeal aimed the lobbying efforts of Melendez and others towards the governor and legislators and focused on the human and fiscal costs of the death penalty. Many members throughout the state called, e-mailed, and met with their local legislators, voicing their support for repeal.

When it came to drafting the actual legislation, however, "All of us recognized that to be successful, we needed legal expertise. NMCDLA was very helpful in that way," says Patrick Tyrrell, co-chair of NM Repeal since its inception and himself

New Mexico was the result of over a decade of grassroots work, with advocates from many realms contributing," Elkey noted. "There was no one message, nor one messenger. It was truly a coalition effort and all voices were monumental to our success in 2009."¹²

The Victims and Families

An extremely effective, and to some, surprising, element of the campaign was the creation of a booklet, *Not in Our Name — New Mexico* (NION-NM),¹³ which NM Repeal disseminated to legislators in the House and the Senate, the media, and Gov. Richardson.

Produced by Murder Victims' Families for Reconciliation, NION-NM contains stories of some of the families, friends, and communities in New Mexico affected by homicide and their shared message of support for alternatives to the death penalty. The narratives provide por-

traits of survivors who have released their desire for revenge to focus on healing and paying tribute to their loved ones. The booklet emphasizes an important message for the coalition: take the focus away from the murderer and more towards remembering the victim and the victim's family.

investigator, I discovered firsthand that innocent people really could be charged with the death penalty. In addition, my Catholic upbringing contributed to the belief that I, my son, and the rest of the family now firmly hold: that the death penalty is just wrong. We didn't even want it for Norma's killer. Through my years of work in the criminal justice system, I've interviewed hundreds of victims' family members. I am surprised at the number who prefer life in prison over death for their loved one's murderer."

The Senate sponsor, Michael Sanchez, read Moya's story on the Senate gallery floor, culminating three hours of debate.

Michelle Giger, one of the original family members who testified in 1997, summarized the view of many family members. "The entire system is fraught with error, is wildly expensive, and places each of us squarely in the position of behaving like the people we are trying to punish. People who commit acts of violence deserve to be held accountable, and the rest of us deserve to be protected from them. Surely, we can do that, though, without acting just like them and becoming killers ourselves."

These family members realize that their loved ones will never return, and the death penalty does not provide the healing they seek.

The Exonerated

Other voices that had an impact were those who had wrongfully spent time on death row. According to the Death Penalty Information Center, as of April 8, 2009, there have been 131 people in 26 states released from death row based on evidence of their innocence. In New Mexico alone, four people have been exonerated. In 1974, four men — Thomas Gladis, Ronald Keine, Clarence Smith, and Richard Greer — were indicted for the same crime and subsequently vindicated by not only a confession from the actual murderer, but through the discovery of police misconduct and false witness testimony. This case emphasized some of the inherent flaws in the system and laid the basis for arguing against a policy that, once carried out, offers no point of return.

In addition to communicating this New Mexico story to decision-makers, NM Repeal was fortunate to partner with Juan Melendez. He moved to the state after being released from Florida's death row. Melendez's 18 years on death row contributed to his being a passionate advocate for repeal. New Mexico was fortunate to count Melendez as one of her

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— Rep. Gail Chasey

a victim's family member. Both his organization, the National Association of Social Workers (an organization that takes a national stand in opposition to capital punishment), and NMCDLA were among the many partners in NM Repeal. According to Viki Elkey, NM Repeal's executive director, the coalition consisted of about 4,000 members and 140 supporting organizations. Other organizations included Murder Victims' Families for Reconciliation; the New Mexico Public Health Association; the League of Women Voters; the New Mexico Conference of Catholic Bishops; the Lutheran Office of Governmental Ministry; the New Mexico Conference of Churches; the National Association for the Advancement of Colored People-NM; the American Civil Liberties Union-NM; and various Amnesty International chapters. In addition, active volunteers consisted of current and former criminal justice professionals; trade unionists; schoolteachers; clergy; lay faith leaders; former law enforcement, corrections, and prosecutors; business leaders; legislators; and attorneys.

Building consensus among such a broad base is challenging, but not impossible. "The successful abolition effort in

traits of survivors who have released their desire for revenge to focus on healing and paying tribute to their loved ones. The booklet emphasizes an important message for the coalition: take the focus away from the murderer and more towards remembering the victim and the victim's family.

Zelda Simpson, one family member profiled in the booklet, spoke of the recent murder of her son and the need to remember his life affirmatively. "I didn't choose to be the mother of a murdered child, but I believe this role can have a positive impact on ending the death penalty in New Mexico." She continued, stating, "I believe that lending my energies to the repeal efforts is a way I can get out of my own pain and prevent the violence from spreading. I'll fight for this for my grandson — Chris's son — and for the hope that his future will be better."

Others spoke of the problems with the criminal justice system and its inherent fallibility. Maurice Moya, a 21-year veteran of the Albuquerque Police Department whose daughter-in-law was murdered, revealed, "As a young officer with the APD, I thought the death penalty worked, until I learned it served no purpose. It wasn't a deterrent, and it was too easy on the murderer. Later, as a private

most dedicated sons as he traveled throughout the state sharing his story of being wrongfully sentenced to death. He spent years speaking to small and large groups, and with legislators and Gov.

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Richardson himself. His story of faith and perseverance amidst a justice system gone awry tipped the scales for many listeners.

Future Efforts

New Mexico's repeal, while successful, is not a total end to executions in the state. Two men, Robert Fry and Timothy Allen, remain on death row in New Mexico. Because the repeal is prospective and affects only crimes committed on or after July 1, 2009, the new law does not affect existing death sentences. Thus, in the future and at great expense to the state and emotional drain on the victims' families, these men could be executed. Members of NMCDLA are working vigorously, however, to prevent this from happening.

With any legislative victory there is always the fear that the success itself can be annulled with subsequent legislation. There were some threats of that in the aftermath of the governor signing the bill. As Nancy Hewitt, a public defender, victim's family member, and co-chair of NM Repeal, states, "Our immediate goal is to at least counteract some of this press [and] any movements towards reinstatement." Continuing to educate communities and legislators will protect against knee-jerk legislative actions that would jeopardize the current statute.

Rep. Chasey will also continue to advocate for the two bills for victims' services that were part of the overall repeal package but were not acted on during the 2009 session. She is committed to ensuring that families benefit from the enacted repeal and will continue to promote the bills.

In addition, in gratitude to the assistance provided by people in national and other state organizations, Chasey and repeal leaders are offering to help other state coalitions as they work towards repeal. These organizations currently include groups in Colorado, Kansas, Montana, Nebraska, and New Hampshire, all of which are attempting to repeal the death penalty. And this year, while Maryland did not pass full repeal, the legislature restricted the prosecution of capital cases to those in which there is evidence such as DNA, videotape of the

crime, or video recording of a confession.

It is clear that repeal of the death penalty — or in some cases, severe restriction of its use — is now becoming part of the dialogue in state houses across the country. It is time that legislators examine whether the death penalty actually provides safety to communities, justice to victims and their families, and the assurance of due process for those accused. The amazing example of the New Mexico campaign should serve as a reminder to all of us that legislative reform does not happen overnight, but over several legislative cycles. Lasting reform exists when the advocacy, legal, faith-based, victims' families and other communities effectively work together to bring about, and to maintain, change.

In the words of abolitionist Frederick Douglass, "[I]f there is no struggle there is no progress. ... Power concedes nothing without a demand. It never did and it never will."¹⁴

Notes

1. NM Repeal — <http://nmrepeal.org>.
2. Public Defender Department, *Agency Bill Analysis 2009 Regular Session Report on HB285-355* (as provided to the New Mexico Legislature).
3. Go to <http://standdown.typepad.com/weblog/2009/03/governor-richardsons-statement-on-repeal.html> (last visited May 12, 2009).
4. See <http://www.ncadp.org>.
5. See <http://www.ncadp.org/index.cfm?content=5>.
6. Shari Allison interview with Rep. Gail Chasey (April 3, 2009).
7. See <http://www.mvfr.org>.
8. Shari Allison interview with Pat Tyrell (April 8, 2009).
9. See <http://www.nmcldla.org>.
10. Shari Allison interview with Rep. Gail Chasey (April 3, 2009).
11. Shari Allison interview with Kathleen Bowman (April 3, 2009).
12. Statement from Viki Elkey (April 20, 2009).
13. For more information, go to <http://www.mvfr.org> or <http://nmrepeal.org>.
14. Available at <http://www.blackpast.org/?q=1857-frederick-douglass-if-there-no-struggle-there-no-progress> (last visited May 12, 2009). ■