

Engaging Unlikely Allies to Achieve Criminal Justice Reform

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Introduction and Summary

You've heard how the debate over the death penalty has been changing dramatically, that for several decades, the criminal justice reform effort, especially regarding the death penalty, was dominated by a divisive debate between those labeled "tough on crime" and others considered "soft on crime." Fortunately, those labels have recently begun to dissipate - although not entirely - as some individuals who were previously viewed as "tough on crime" have begun to recognize the problems that plague the justice system and the urgent need for reforms in a wide variety of areas. Many of these people are now calling for abolition of the death penalty, or, as a step to abolition, for badly needed reforms.

Death penalty abolitionists -- traditionally liberals, civil libertarians, criminal defense attorneys, prisoner advocates, etc. -- have "preached to the choir" for a long time. Almost 20 years ago, they started recognizing that to move forward, to make progress, they had to build relationships with so-called "unlikely allies." "Unlikely allies" includes people like prosecutors, judges, police officials, conservative opinion leaders, Republicans, evangelicals, victim advocates and others.

Why is it important to engage these people in the death penalty debate? These unlikely allies are usually perceived as death penalty supporters and opponents of reforms. So by advocating for abolition or reform, they are particularly persuasive and effective. They can provide access to policymakers, to professional colleagues, and to the press that abolitionists and other "likely allies" often cannot. They can appeal to new audiences and change minds. Their credibility cannot be ignored and cannot be underestimated.

In the U.S., the voices of unlikely allies are now quite prominently speaking out in the death penalty debate. This debate is occurring on both the federal level and in the states, several of which have abolished the death penalty outright. The "soft on crime" label is disappearing. Without unlikely allies joining forces with traditional allies, this would not have happened.

My effort here today is to describe to you how we have gotten to this place and how advocates can connect and work with unlikely allies to achieve mutually agreed-upon goals.

First, it is vital to **identify and match the messengers and the message to the audience**. Often by using different language, modified solutions, and other non-traditional means, we can

broaden the tent of those who support the end goal, even if those in the tent come to their conclusions for different reasons.

For example, traditional abolitionists may believe that the death penalty is immoral. This is an argument that only a minority of Americans support. To get to a majority, we must broaden the reasons that people support abolition. For example, many conservatives may support capital punishment in the abstract, but believe it should be abolished because the death penalty is extraordinarily costly, and because the government cannot be trusted to get it right.

The Constitution Project has, for many years, led and facilitated this change, through its Death Penalty Committee that includes supporters as well as opponents of capital punishment, all of whom believe that the risk of convicting and executing the wrong people is too great; through its Clearinghouse of Unlikely Allies, which finds unlikely allies to speak out in support of cases challenging the death penalty and people who should not be on death row; and through its Public Safety Officials and the Death Penalty, consisting of top police and corrections officials, and prosecutors, all of whom have serious concerns about the death penalty.

Specific Benefits of Working with Unlikely Allies

The unexpected nature of unlikely allies makes them particularly persuasive and influential in calling for criminal justice reform. Policymakers, the press and the public do not expect calls for reforms to the criminal justice system from individuals with their backgrounds and philosophies. Thus, their support can generate a substantial amount of attention to the issue.

Unfortunately, the usual suspects often sound (at least to some) like broken records who can be easily ignored. Or their advocacy may be discounted as a ploy, as when death penalty abolitionists arguing for reforms are considered to be doing so simply as a way to bring about abolition.

An unlikely ally makes people, and especially those inclined to oppose reforms, **stop and pay attention**. They **add credibility** to calls for reform and reinforce the soundness of proposals.

Unlikely allies also have the **ability to reach new and different audiences**. They may have **influence over different individuals** than do traditional criminal justice reform advocates and may be able to convince different policymakers. They also may be able to **provide access to and mobilize different constituencies**.

Finally, unlikely allies can help advocates **craft arguments that resonate with new and diverse constituencies**. They can assist in developing messages that have broader appeal, as well as identify messages that are likely to alienate important individuals or groups and should be avoided in certain communities. Criminal justice reform campaigns will benefit tremendously from their participation as they help to achieve broader support in areas where advocates have failed in the past.

Types of Unlikely Allies

Unlikely allies may have a variety of knowledge, backgrounds, and professional experiences. Here are just some of the possibilities.

Criminal Justice System Experts

Those with professional experience within the criminal justice system can be particularly effective, because they know firsthand what the problems in the system are.

- Within the criminal justice system, prosecutors are some of the most common unlikely allies. Because their role is to uphold the law as it stands, and because they are generally viewed as “tough on crime,” their voices are particularly influential in calling for modifications of the law. Further, prosecutors tend to be trusted by the public.
- Other law enforcement and corrections officials are also particularly persuasive messengers. As with prosecutors, they are generally seen as pro-law-and-order, so their support for reforms that “favor” defendants or convicted criminals tends to be unexpected. Similarly, these law enforcement figures are generally trusted by the public.
- Judges can also be particularly influential, given the fact that the public often attributes neutrality and wisdom to them.
- Finally, victims and victim advocates are particularly powerful spokespeople. They put a human face on the criminal justice system and are viewed sympathetically by the public. And, in the past, victims and their advocates have often been identified with tough law enforcement positions; thus, their support for reforms can have special resonance.

Note that just because prosecutors, judges or law enforcement officials are retired or have moved on to another career, they still may carry considerable weight as *former* prosecutors, *former* judges, *former* police officers, etc. In fact, they may actually feel much more freedom to speak out and advocate for reforms after they have left a position where they may be constrained by their office, and by politics, as to what they can say.

The Political Right

Conservatives have begun to embrace death penalty abolition and reform, often motivated by the fact that the current system is extraordinarily expensive and wasteful, not to mention counterproductive, and because of their distrust of any government program, including capital punishment. Traditional reformers must cultivate relationships with conservatives who are open to reforms, even if their motivations for reforming the system differ significantly.

Religious Leaders

Religious leaders often have access to much larger constituencies (i.e., their congregations and related congregations) than traditional advocates have, and can promote reforms with greater effectiveness and persuasiveness. The type of religious leader will obviously depend on the issue and the audience. For example, Sister Helen Prejean and the late Cardinal Joseph Bernardin were said to have been particularly influential to then-Governor Quinn of Illinois, who is Catholic, when he was deciding whether to sign the death penalty repeal bill enacted in early 2011. Other policymakers may be influenced by mainstream Protestant ministers, rabbis, evangelical leaders, and so forth. Conservative religious leaders may be the most influential of all, since many of them have supported “tough on crime” policies in the past and can reach a wide array of non-traditional audiences. Evangelical leaders, often considered very conservative in this area, are starting to speak out about their concerns about the death penalty.

Business Leaders

Another fertile ground for support is the business community. While business leaders may have no relevant experience with the criminal justice system, they are often trusted leaders within a particular community and/or state. Furthermore, since the economy is generally at the top of the public’s list of priority issues, having business leaders tell the public that the wasteful, high-risk death penalty system harms the economy and the reputation of the community is an effective message. They can raise the profile of issues that are not often at the top of the public’s list of concerns. Business leaders may also have a level of access to policymakers that traditional advocates do not have.

Beyond the Obvious Unlikely Allies

There may be others within your community or your state who might become allies. Start with those who have some familiarity with the criminal justice system in general.

- Have they or a close family member or friend had contact with the criminal justice system that would lead them to support a particular reform?
- Have they made public statements suggesting they favor criminal justice reforms? A statement supporting one reform may suggest that they are open to other reforms.
- Have they taken positions on other issues beyond criminal justice suggesting they may be sympathetic to certain criminal justice reforms? For example, someone who has expressed concern over child welfare may welcome the Supreme Court’s decision to bar the death penalty for juveniles.

Connecting and Working With Unlikely Allies

Working with unlikely allies requires a skill that is no different than what advocates do every day: networking. Be sure to ask your existing contacts to reach out to others who have not yet become involved, but who can speak out when certain issues arise:

- Attend panel discussions, presentations and meetings where unlikely allies will be.

- Scan the newspapers and media to find individuals quoted saying something unexpected and suggesting support for your position or a similar one.
- Keep track of influential individuals who are retiring or stepping down from certain positions; their retirement may provide them with more time to work with you and more leeway about the type of work they can do.
- Ask your colleagues to use their networks to find unlikely allies.

The Role of Unlikely Allies in Campaigns

Media & Public Messaging

Unlikely allies may be willing to byline **op-ed** pieces or **letters-to-the-editor**. You should be willing to draft the pieces for them. An initial chat with them so you can **write in their “voice”** is very helpful. The piece may well not sound exactly the way you would say it, but so long as it still advances your cause, you should be open to changes in tone, language and in substance that they make. For example, when the State of Texas was about to execute a man whose evidence of mental retardation had never been considered in federal court, The Constitution Project worked on an op-ed with the man sitting next to me, who happens to co-chair our Death Penalty Committee. But that op-ed did not call for complete clemency, as some death penalty abolition and reform advocates wanted. Rather, as a former Governor of Texas under whom 19 people were executed, Governor White thought it would be more effective to ask then-Governor Perry to stay the execution and conduct an independent investigation of the petitioner’s claims. The fact that it was Governor White making this request brought a lot of attention to the case that it might not otherwise have had.

Newspapers also like to publish opinion pieces from **“strange bedfellows,”** *i.e.*, unexpected *pairs* of authors, like a former U.S. attorney and a former federal defender. We worked with two members of our Right to Counsel Committee to publish an op-ed in the Atlanta Journal-Constitution calling on Georgia prosecutors to take the death penalty off the table in a case that had not gone to trial in six years since the defendant’s arrest because of a lack of funding for defense counsel. The authors of the piece were two individuals with diverse experience, both of whom are particularly well-respected in Georgia: Norman S. Fletcher, the former Chief Justice of the Georgia Supreme Court, and Larry D. Thompson, the Deputy Attorney General in the George W. Bush administration and a former U.S. Attorney in Georgia.

Unlikely allies can act as spokespeople on certain issues. This may require that you educate them to speak about an issue in a way that is helpful to your cause. If you are comfortable that they will convey your message effectively, they can attend **editorial board meetings** or give **interviews** to the media. They can also speak at **public education events**. Having unexpected spokespeople at your events will not only improve attendance, but also improve your messaging and outreach.

Another way that unlikely allies can be particularly helpful is **advising you on crafting arguments and messaging**. Advocates should strategize with unlikely allies about the

motivations and sensitivities of constituencies that have not supported particular criminal justice reforms in the past. Unlikely allies can assist in a strategy to reach these constituencies and develop arguments that these new constituencies will find persuasive. Make sure to ask unlikely allies to review your talking points, fact sheets or other documents, and to edit those documents to be more appealing to conservatives, prosecutors, etc.—whatever constituency they represent. Do not just assume that you can figure out the appropriate language. Many criminal justice advocates use loaded terminology in their writing and speaking without even realizing it, and unlikely allies can help instruct advocates about which words and messages are particularly alienating to new audiences.

Contacting Policymakers

Unlikely allies can be unusually effective in speaking directly to policymakers. They make particularly persuasive witnesses at **legislative hearings**. They can provide **access** to policymakers who refuse to meet with or listen to traditional abolitionists or reformers. They can write **letters** (with your drafting help) to legislators. They can **submit comments** on proposed rules and regulations. If you are comfortable that they will be on message, they also can make calls to and **personally meet with legislators**. For example, a few years ago, Florida's state legislature was considering a bill to split the state supreme court, giving the governor the opportunity to make a significant number of court appointments. This was an effort to stack the courts and expedite death penalty appeals. A coalition of former state supreme court justices and others fought back, participating in a telephonic press conference to explain why the legislation was a bad idea. One particular former supreme court justice personally met with many influential legislators to explain to them that the current state supreme court did not need changing. This message was more persuasive coming from a former supreme court justice than from an anti-death penalty group. The measure was defeated.

Groups of Unlikely Allies

Unlikely allies can have a great impact when they speak as a group. Consider **sign-on letters**. For example, TCP organized a letter from more than 30 former judges and prosecutors that was sent to the then-governor of Ohio requesting clemency for a man who was scheduled to be executed despite compelling evidence of his innocence. The letter was discussed in a New York Times article about the case, and the Governor ended up granting clemency. TCP has worked on similar letters to Congress and state legislators concerning pending legislation. For example, TCP wrote a letter for former prosecutors and judges, primarily from border states, who supported legislation that would provide judicial review for foreign nationals on death row who were denied consular access. Around the same time, Texas was preparing to execute Humberto Leal Garcia, who would have been affected by this legislation. The controversy over the consular access issue attracted an enormous amount of press attention, with the letters from the unlikely allies cited in many articles about the case.

Amicus briefs from groups of individuals can also be particularly persuasive to courts. For example, we organized a group of prominent former judges and prosecutors to support the petitioner in *Foster v. Chatman*, a Georgia case where there was blatant discrimination against black people in jury selection. And in *Williams v. Pennsylvania*, we organized a brief from

former appellate judges and another from former big city prosecutors who had all tried capital cases, condemning the state's chief justice for considering Mr. Williams' case. Before he became chief justice, this man had headed the prosecution office that convicted Mr. Williams and sent him to death row. A lower court had overturned the conviction, finding significant prosecutorial misconduct by the office headed by the man who was now the chief justice and who was now rejecting that finding.

Tips for Working with Unlikely Allies

Eliminate An "Us" vs. "Them" Mentality

Working with unlikely allies requires advocates to **eliminate the "us" versus "them" paradigm** with which advocates often approach criminal justice issues. Too often, advocates view issues as having two diametrically opposing points of view, often with a prosecutors' group on one side and the defense bar on the other. Or Democrats on one side and Republicans on the other. Rather than perpetuating this dichotomy, **identify areas of consensus and agreement**. You need not agree on every detail; an unlikely ally who goes even halfway towards your goal can be enormously helpful. Some advocates also have a tendency to treat those with different opinions from one's own as unenlightened or even ignorant. One must **treat the opinions of unlikely allies with true respect**.

As a very basic example, the death penalty debate is often thought of as a debate between those who are "pro-" and "anti-" death penalty. For years, those against the death penalty sought to convince those in favor of it that the death penalty must end, for the sole reason that it is immoral. However, while a minority of the public believes that capital punishment is immoral, most Americans disagree. The **morality argument is thus generally unproductive** in building a majority in favor of abolition or even reform. So don't try to convert them. If an unlikely ally supports the death penalty, and you don't, there's no need to discuss the morality issue. Maybe you can agree that the system convicts too many innocent people, makes too many mistakes, or is too costly. That, not the morality of the death penalty, should be the starting point for a conversation in which you are asking them to support badly-needed reforms. Often, even those who support capital punishment in the abstract end up opposing it because the more they learn about the system, the more likely it is that they will come to believe that the problems with the system can never be sufficiently fixed.

Use the Appropriate Voice

Certain unlikely allies will be particularly well-suited for particular campaigns, so carefully consider both the subject matter and the audience when deciding who would be most influential in speaking about a certain issue. For example, former prosecutors of capital crimes are particularly appropriate for death penalty reforms, etc. (This is not to say that people will not be willing to speak out on issues more outside their direct sphere of experience.)

Also **consider your audience**. Particular policymakers may not be convinced by someone from outside their jurisdiction, whereas someone from inside the jurisdiction will carry much more

influence. On the other hand, in some instances, people with national experience may be more persuasive. For example, President Jimmy Carter attracted significant media attention when he encouraged Governor Bill Richardson to sign legislation abolishing the death penalty in New Mexico, and provided political cover for his fellow Democrat who was in the national spotlight as he decided to sign the bill.

Some individuals may be more swayed by party than experience—i.e., someone with strong Republican credentials would be more influential with a Republican policymaker than a Democratic prosecutor, despite the prosecutor's law enforcement credentials. Do your research on who needs to be persuaded and choose your unlikely ally carefully. Look for campaign donors as well. If they are interested in a particular issue, they can be extremely effective advocates.

The important thing to remember is that **to create a majority in favor of reform, it is vital to evaluate the audience, and then craft a message and identify a messenger who can influence and persuade that audience.**

A Note on Overuse

Once you develop a relationship with an unlikely ally who proves to be a particularly good spokesperson on an issue, you may find it easy to turn to that individual for support time and time again. **Keep in mind that the persuasiveness of an unlikely ally stems in part from the fact that his or her support is unexpected.** If that unlikely ally continues to speak out about criminal justice reform, you may end up transforming him or her from an unlikely ally to a usual suspect. So use the relationships that you have developed with unlikely allies wisely and sparingly.

Communication Tips

Advocate for Justice When Appropriate. Advocating for a Particular Defendant May Not Help.

When speaking about a particular case or issue, criminal justice advocates may seem to minimize the horror of a particular crime, or to fail to acknowledge the societal harms that crime creates generally. Several years ago, Benneton had a series of ads featuring people on death row, failing to acknowledge the victims and family members of these crimes. It created worldwide outrage.

An advocate will win credibility by **recognizing the harm that crime does to communities;** acknowledging that citizens have a legitimate concern about keeping themselves and their families safe from crime; and showing compassion for victims of crime.

Acknowledge Damaging Facts

Similarly, advocates must speak with honesty and openness about particular crimes. Failure to acknowledge damaging facts can harm one's credibility. You can credibly say, as many death penalty defenders do, that a person on death row is more than any one horrible act he or she

has committed. And you can talk about the mitigating circumstances surrounding that person's crime, which can be quite compelling. But you must acknowledge the crime and its impact.

To maintain your credibility, **acknowledge the truth about the harm of the crime, even while advocating the need for a certain reform or action.**

Acknowledge Victims

Relatedly, you must maintain your credibility by **acknowledging the victim and the victim's family members.** Where appropriate, even acknowledge that the defendant behaved wrongly and deserves to be punished. By doing so, it shows others you care about justice – not just the rights of the defendant—and will help to increase your credibility and therefore support for your cause.

Consider the Motivations of Your Allies

Additionally, in developing relationships with unlikely allies, it is important to **find out what motivates them**, and emphasize arguments based on their motivations, rather than your own. Take conservative unlikely allies, for instance, who may emphasize public safety, transparency, accountability, cost-effectiveness, reducing victimization, personal responsibility and free enterprise. Many traditional criminal justice advocates care about some or even all of these principles, but they might rank fairness, racial justice, and civil liberties more highly. However, you may lose your unlikely allies and the audiences that they might persuade if you emphasize your own motivations. So craft your arguments to support conservative principles when working with conservative allies. Also, when possible, use examples of conservative states and conservative policymakers. **It should not matter what unlikely allies' motivations are so long as all agree on the end result, or at least something close to it.**

Use Plain Language

Many influential unlikely allies, and your target audiences, are not part of the legal system. They may be put off by a failure to speak in plain language. **Stay away from legal jargon** and instead speak in straight-forward language understandable to those without law degrees and who have no experience in the criminal justice system.

Pitfalls in Engaging Unlikely Allies

Idealism

An idealist not only wants others to support a reform, but also want them to support it for the “right” reasons. There are no “right” or “wrong” reasons so long as you end up in the same place. Do not let the motivation of your unlikely allies for seeking reform dissuade you from working with them. They may be motivated by their religious faith, their belief in small government, a personal experience with the justice system, or a multiplicity of beliefs that you do not share. However, **you do not have to share the same motivation to share the same goal.**

Grudge-Holding

Some traditional advocates want to publicly blame unlikely allies for their past support for the death penalty and for getting us into the situation we are in now. The grudge-holder needs to acknowledge that **the apology they seek will likely not happen**. Do not expect apologies from prosecutors or judges about past decisions that *you* feel were erroneous. Do not expect any politicians to apologize for advocating legislation that *you* believe was bad policy. **Be willing to overlook who might have caused existing problems and why, and move forward with unlikely allies to improve future policy.**

Purists

It is true the perfect is the enemy of the good. If you accomplish 80% of your goal by conceding something to potential unlikely allies, in most cases that is much better than accomplishing nothing by relying solely on traditional allies. Being a purist may mean that **some compromise may be necessary**. Purists may not be willing to support incremental reforms because anything short of their end goal is viewed as a defeat. An example is those who oppose life-without-parole as an alternative to the death penalty because they believe the possibility of parole is always appropriate. **When working with unlikely allies, don't let the perfect be the enemy of the good.** While it is necessary to keep long-term goals in mind, **reform generally is accomplished on an incremental basis.** It may take a long time to reach your ultimate goal.

The United States is approaching abolition. Not fast enough. But several states have abolished the death penalty in recent years, and several others are actively considering it. Courts from the U.S. Supreme Court down have condemned capital punishment and the practices used to convict and sentence people to death. Pharmaceutical companies are refusing to let their drugs be used for lethal injections. Step by step, we are getting there. Perhaps the biggest change – the one that started all the others – is that unlikely allies have realized that the system is badly broken and that they are willing to speak out about it.

It's a growing movement and the more it grows, the closer to abolition we will be.