

Death Penalty Repeal Makes Huge Strides and Falls Short

By Arnie Alpert

Legislation to repeal New Hampshire's death penalty attracted tremendous political support and won stunning victories in the House of Representatives this year. But it stalled in the State Senate, which voted 12 to 12 in April.

That means New Hampshire will end the year as it began, with one man in prison and sentenced to be put to death by the state, and with a rarely used capital murder statute still on the books. As Representative Renny Cushing quipped, "a tie goes to the executioner." But the state's political reality has gone through what the *Nashua Telegraph's* called "a seismic shift in legislative attitude from only a year ago."

With a bulked up staff of skilled organizers supported by donations and foundation grants, the New Hampshire Coalition to Abolish the Death Penalty mounted a multi-faceted campaign involving work with legislative allies, grassroots outreach, skilled use of the news media, mobilization of citizens for hearings and "days of action," plus decentralized vigils and marches. Talks by national leaders including Sister Helen Prejean, the author of *Dead Man Walking*, and Kirk Bloodsworth, who was freed from death row based on DNA evidence that cleared him of responsibility for a Maryland murder, enabled the Coalition to win new supporters and invigorate the old ones for action.

Inside the State House, the Coalition worked effectively with a bi-partisan and diverse array of legislators. Progressive Democrats, libertarians, right-to-lifers, fiscal conservatives, and those who simply favor a more practical approach to dealing with serious crime found they could unite around the idea that the death penalty serves no useful purpose. Led by Representative Cushing, a long-time death penalty opponent and founder of Murder Victims Families for Human Rights, legislators talked up the issue with their peers which helped some legislators who had previously voted to retain the death penalty to instead become passionate advocates for repeal.

"It really is a barbaric practice," said Rep. Steve Shurtleff, who spent more than 30 years in law enforcement and who supported the death penalty up to this year. Speaking on AFSC's "State House Watch" radio show on June 1, Rep. Shurtleff cited the failure to pass repeal legislation as one of his big disappointments of the legislative session that ended June 4.

The core of grassroots support came from the faith community, including Quakers, Catholics, Unitarians, Episcopalians, Lutherans, Jews, Buddhists, members of

the United Church of Christ, and others. The Rt. Rev. Robert Hirschfeld, Bishop of the Episcopal Diocese of New Hampshire, initiated a multi-denominational "Preach-In" for repeal in November and worked closely with leaders of other Christian denominations to place op-ed columns in several New Hampshire newspapers. The Most Rev. Peter Libasci, Bishop of the Roman Catholic Diocese of Manchester, was likewise deeply engaged in the campaign and attended several pro-repeal events in addition to showing up at the State House for public hearings. Rev. Jonathan Hopkins, President of the NH Council of Churches, was a frequent participant at hearings and events and opened up his church, Concordia Lutheran, for Coalition meetings.

Through its "Faith Initiative" project, the Coalition also organized "Moving Vigils" in late March in Hampton, Manchester, Concord, Dover, and Berlin. The events, each of which included speakers from several faith traditions and stops at symbolic sites, together drew hundreds of

participants.

The most poignant and potent voices for repeal came from people who have lost loved ones to homicide. By explaining that killing killers would not bring back



Representative Renny Cushing

their murdered family members, these individuals helped lawmakers better understand why society should take steps other than engaging in more killing in order to help families and communities deal with the aftermath of murder.

Margaret Hawthorn of Rindge, whose daughter Molly Hawthorn-MacDougall was murdered in her Henniker home in 2010, spoke in churches, libraries, colleges and legislative meetings about her opposition to capital punishment. "I knew, even on the cold April day that started with a phone call urging me to get to Henniker," she recalled in a sermon delivered at a Jaffrey church, "that if I allowed hatred to find a place in my heart it could take me down in a way I might never make my way back up. Before a suspect and motive were named, I vowed not to make room for a desire for revenge."

The Rev. Dr. Bernice King even weighed in with an op-ed in the *NH Union Leader*, published during the week her father's birthday is celebrated as a national holiday. "Having lost my father and my grandmother to homicide I can well understand the hurt, anger, and frustration that lead some people to support the death penalty," she wrote. "Yet I can't accept the judgment that killers need to be killed, a practice that merely perpetuates the cycle of violence."

Given the support for the death penalty by the organized law enforcement community, the Coalition organized its own corps of current and former police and corrections officers willing to speak out for repeal. In particular, Ray Dodge, the former Chief of Police in the Cheshire County town of Marlborough, and Richard O'Leary, former Deputy Chief in Manchester, spoke to every available Senator and testified at both House and Senate hearings.

Another powerful voice came from John Breckinridge, a former police officer who was in the Manchester alley with his partner, Michael Briggs, when a gunshot from a fleeing suspect took Briggs' life in 2006. The fleeing suspect, Michael Addison, was found guilty of capital murder and sentenced to death in 2008. Like many other members of the Manchester Police Department, Breckinridge initially supported the call for Addison's execution. But after he left the police force and got back in touch with his Roman Catholic faith, Breckinridge changed his views and had the courage to speak out in public for the death penalty to be repealed and Michael Addison's life to be spared.

"Given the Catholic view on the sanctity of life and our modern prison system and the means we have to protect society, it became clear to me that as a Catholic I could not justify the very pre-meditated act of executing someone who – for all the evil of their crime and all the permanent hurt they caused others – still lives, like Saint Paul did, in the possibility of spiritual redemption. That's where my journey brought me," Breckinridge said. Although he never appeared before a legislative committee, the story of his journey, told as a featured story in *Parable*, the Diocese of Manchester's magazine and reprinted in the Concord Monitor, circulated throughout the State House and had a profound impact on the legislative debate.



The repeal campaign drew active support for organizations such as the Diocese of Manchester, Amnesty International USA, the NH Civil Liberties Union, and of course the AFSC, all of which devoted many hours of staff time to strategy meetings, lobbying, and public education.

At the House and Senate

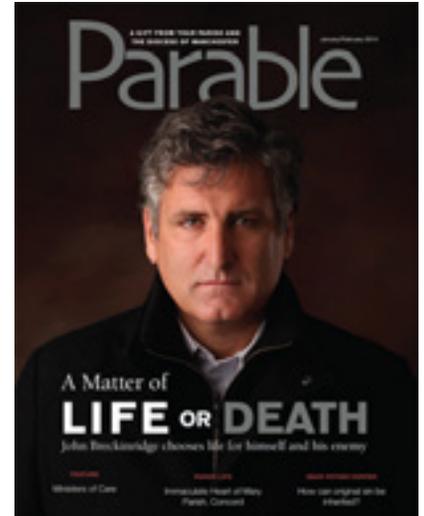
Inside the State House the repeal legislation's path was dramatic. A public hearing before the House Criminal Justice and Public Safety Committee on January 16 attracted so many people it had to be moved to Representatives Hall. The bill, HB 1170, stripped out all references to capital murder from state law. The bill listed as sponsors the names of 5 Democratic Representatives, 5 Republican Representatives, and 1

Senator from each party. Rep. Cushing, the prime sponsor, also used a little-known legislative rule to gather official sponsorship of an additional 104 Representatives.

At the January 16 public hearing, committee members heard from Phil McLaughlin and Greg Smith, both of whom who had supported the death penalty during their terms as NH Attorneys General. "Through most of my life I favored capital punishment and the death penalty," McLaughlin testified. Noting that the last execution in New Hampshire was in 1939, he said that it would be at least 75 years and 1000 murders before the State conducts another execution. "It will not be seen as fair by history," he observed.

Other speakers included former judges, former law enforcement and corrections officers, the two bishops and other faith leaders, several murder victim family members, and legislators from both political parties. When the hearing was done, 31 people had testified in favor of HB 1170 compared to only 3 who spoke in opposition.

The committee followed up the hearing with its own debate on February 11. There, veteran Representatives Steve Shurtleff, Laura Pantelakos, Robbie Parsons, and Dennis Fields announced they had changed their views and would vote for repeal. When the speeches were done the committee voted 11 to 3 to support the repeal bill, with a majority of both Democrats and Republican members



aligned against the death penalty and with no one willing to write a minority opinion.

With such strong, bi-partisan support from the Criminal Justice and Public Safety Committee expectations were high for the House vote on March 12. But it would have been hard to predict that Representatives would vote 225 to 104, more than a 2-to-1 margin, to send the repeal bill on to the Senate.

Coalition leaders always saw the Senate as a tougher arena. Again repeal supporters showed up in large numbers for an April 3 public hearing before the Senate Judiciary Committee, and once again the hearing had to be moved to Representatives Hall. Pro-repeal speakers were joined by two prominent retired judges, John Broderick, former Chief Justice of the NH Supreme Court, and Walter Murphy, former Chief Justice of the NH Superior Court. “There is simply no valid reason for a civilized society to condone the systematic killing human beings,” Justice Broderick wrote in a NH Union Leader op-ed co-authored by Joseph Nadeau, another retired Supreme Court Justice.

Once again, faith leaders, murder victim family members, the two former Attorneys General, and people who had dedicated their careers to law enforcement outlined reasons why the death penalty contributes nothing to public safety, drains public resources, conflicts with fundamental values, and offers false hopes to the loved ones of homicide victims.

But in contrast to the House hearing, Senator Sharon Carson, Chair of the Judiciary Committee, pushed back



not affect sentences of those who were found guilty while the law was valid.) They also pointed out that Connecticut and Maryland, the two other states that eliminated their death penalties, did so in a “prospective” manner that left people on death row.

The status of Michael Addison was not going to be pushed aside with representatives of the organized law enforcement community in the room insisting that the death penalty should stay on the books. Michael Selicky, Chief of Police for the Town of Kensington, said the chiefs want the law to send a message that “if you kill a police officer you will be put to death.”

“Don’t let this get to the stage where Michael Addison spends the rest of his life in jail when he should be put to death,” Selicky told the Judiciary Committee. His sentiment was reinforced behind the scenes by US Senator Kelly Ayotte, who led Addison’s prosecution as Attorney General and built her Senate campaign in part upon the case.

By the time the Senate Judiciary Committee met in executive session on April 8, it was pretty clear that Senators Carson and David Boutin were opposed to repeal, while Senators Bette Lasky and Sam Cataldo, who were also the bill’s two Senate co-sponsors, would vote in favor. Senator Donna Soucy, in whose Manchester district the killing of Michael Briggs had occurred, had not yet made a public statement on the issue. And she was delayed in getting to the State House due to a family obligation. The committee voted 2-2 on an “inexpedient to legislate” motion.

When Senator Soucy did make it back to the State House, she insisted that the committee should revisit the matter. When they reconvened two days later, Senator Lasky’s



Senators Bette Lasky and Sam Cataldo

with questions about the impact of repeal on the case of Michael Addison. Since Governor Maggie Hassan had stated repeatedly that she would not sign a repeal bill that would save Addison’s life, the issue was politically charged as well a legally significant. Judges, lawyers, and legislators tried to explain that the intent and impact of the repeal bill – like virtually all legislation that affects sentencing – would be “prospective,” i.e. it would not undo Addison’s death sentence. (There is a state law, RSA 21:38, known as the “savings clause,” that says repeal of a criminal statute does

**To contact the NH Coalition to Abolish the Death Penalty, visit:
www.nodeathpenaltynh.org**

“motion to re-consider” was adopted 3-2 with the support of Senator Soucy. Senator Soucy then joined Senators Lasky and Cataldo voting for death penalty repeal, thus sending the bill to the Senate floor with a 3-2 “ought to pass” recommendation.

But a majority of the Judiciary Committee did not portend a majority of the Senate when they took up the repeal measure on April 17. Still in a bit of a muddle over the impact of the bill on the fate of Michael Addison, Senators considered an amendment with alternative language, which was defeated. Then they voted 12 to 12 on the bill as written, with Senators Cataldo and Bob Odell joining most Democrats in favor and Democratic Senator Lou D’Allesandro siding with the other 11 Republicans in opposition.

With a majority needed for any motion to be adopted, the debate went on. First, a “motion to table” got a tie vote, then a motion to defeat the bill got another tie vote. Lacking a majority to pass or defeat the measure, Senators voted unanimously to table the repeal proposal, in effect putting it in suspension. But that didn’t end consideration.

Senate Bill 202, a bill to adjust language in the burglary statute, passed the Senate without controversy in March and was referred to the House Criminal Justice and Public Safety Committee where it sat until early May. By then, the story of Clayton Lockett, who died of a heart attack 45 minutes after the State of Oklahoma tried to kill him with lethal chemicals, was all over the news and once again giving lawmakers something new to think about. Representatives Cushing and John Cebrowski agreed legislators should get another look at the issue.

When the Criminal Justice Committee finally gave SB 202 its attention, Rep. Cushing came in with an amendment tagging a simple death penalty repeal

provision onto the burglary bill. As before, the committee gave repeal its strong endorsement setting up another vote in the full House. This time the outcome was 218 to 117 on the first vote, adopting the repeal amendment, followed by a 226 to 110 vote in favor of the amended bill. 53 Republicans voted with the majority.

The strong endorsement from the House did not, however,



Activists leaflet legislators on the day of the first House vote.

sway any votes on the Senate side. When SB 202 returned to the upper chamber, they quickly defeated it by voice vote following a short anti-death penalty speech from Senator David Pierce and a pro-death penalty statement by Senator Jeb Bradley. Moreover Senator Odell, who had belatedly given his support to the repeal measure during the April 17 Senate debate, expressed his unhappiness that the issue had been revived by the House and indicated he would not vote again in support.

As New Hampshire politics shifts attention from legislation to elections, the question remains whether the state has really experienced a “seismic shift” on the death penalty or if it could swing backwards. One thing is clear: the NH Coalition to Abolish the Death Penalty and its allies are not going away.

As the *Concord Monitor* has editorialized, repeal is “inevitable.” It’s not a question of whether New Hampshire will give up its authority to carry out executions but when.

Arnie Alpert is NH Director of the American Friends Service Committee. He has been active with the NH Coalition to Abolish the Death Penalty since its formation in 1997.

June 2014



www.afsc.org/newhampshire



**American Friends
Service Committee**