

EXHIBIT 39
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SB 236

From: Sharpjfa@aol.com
Subject: Rebuttal of Gov. Richardson - New Mexico Repeal
Date: Fri, March 20, 2009 9:55 am
To: undisclosed-recipients::

To: Governors, Legislatures, Attorneys General & Media throughout the US

From: Dudley Sharp, contact info below

SETTING THE RECORD STRAIGHT: A Rebuttal to Governor Richardson
Repeal of the Death Penalty in New Mexico
Dudley Sharp, contact info below

1) Gov. Bill Richardson states: "Faced with the reality that our system for imposing the death penalty can never be perfect, my conscience compels me to replace the death penalty with a solution that keeps society safe." (1)

REBUTTAL: There is no proof of an innocent executed in the US since 1900. There is overwhelming proof that many thousands of innocents have been murdered because of the lack of perfection in parole, probation, early release, prison/jail management etc.

Why did the Governor choose to end that criminal justice practice - the death penalty - which may be the least likely to result in innocent deaths?

Lack of perfection had nothing to do with his decision.

In addition, the death penalty protects innocents at a higher level than does a life sentence. (FOOTNOTE: "Death penalty repeal arguments are false" paragraph 2 & 3).

No one disputes that the death penalty has greater due process than lesser sentences - meaning that actual innocents, serving life, are more likely to die in prison than are actual innocents likely to be executed.

2) Governor Richardson stated: "The bill I am signing today . . . replaces the death penalty with true life without the possibility of parole - a sentence that ensures violent criminals are locked away from society forever . . ." (1)

REBUTTAL: Governor Richardson knows that there is no such thing as true life without "possibility" of parole.

The only absolute with sentencing is that the executive branch, a Governor or President, can commute any sentence and release criminals, early - as Governor Richardson did, in Nov. 2004, when he commuted Janet Vigil's "life" case. (2)

How quickly he "forgot".

Gov. Richardson's buddy, former New Mexico Gov. Toney Anaya, commuted William Wayne Gilbert's death sentence in 1986.

Gilbert led a 7 inmate prison escape, a few months later, where Gilbert shot a guard. (3)

Gilbert had previously murdered " . . . his wife, Carol; a newlywed couple, Kenn and Noel

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Johnson, and a young model, Barbara McMullen. He bragged of other murders, as well. 'It was very easy to kill,' he said. 'It's almost like it's the night before Christmas when you're 5 years old.' "

Hardly a great candidate for commutation. But, this commutation wasn't about the criminal or about the citizens of New Mexico. It was all about Gov. Anaya. His commutations of all death row, had nothing to do with allegations of protecting innocents - it did just the opposite, of course - he just didn't like the death penalty and he takes no responsibility for the outcome.

In addition, legislatures can write new laws which, retroactively, reduce sentences already given.

Gov. Richardson is aware that states around the US are, now, doing just that, as more consider reducing life sentences to save money by releasing lifers, early.

3) The Governor stated: "More than 130 death row inmates have been exonerated in the past 10 years in this country, including four New Mexicans â€" a fact I cannot ignore." (1)

REBUTTAL: The Governor has been informed, repeatedly, that the 130 exonerated is a complete fraud, as has been well documented by many and presented to the Governor, often (FOOTNOTE, paragraph 3). Not only is he not ignoring this deception, he is advancing it, even when it is so easy to disprove. Governor, how many innocents were harmed and murdered because of the lack of perfection in parole, probation, early release, prison/jail management etc.?

4) What about law enforcements' concerns?

"The New Mexico Sheriffs' and Police Association opposed repeal, saying capital punishment deters violence against police officers, jailers and prison guards. District attorneys also opposed the legislation, arguing that the death penalty was a useful prosecutorial tool." (4)

They told the Governor that the death penalty saves lives and helped solve cases.

The Governor conceded that "the death penalty may be a deterrent"(1), thereby telling us that the death penalty is more likely to save innocent lives than it is to take them.

He also conceded that by repealing the death penalty he was taken away a tool for law enforcement. (1) He didn't speculate how many innocent lives he was sacrificing by ending that tool.

We may never know why he really ended the death penalty. We do know that it had nothing to do with saving innocent lives.

"Bernalillo County Sheriff Darren White said law enforcement officers have 'lost a layer of protection and it's a sad day in New Mexico.' " (4)

(1) Gov. Bill Richardson's statement on signing the repeal of New Mexico's death penalty (3/18/09)

(2) " In Loving Memory of Estevan Vigil", http://www.nmsoh.org/vigil_estevan_mem.htm

(3) "Let Loose by the Governor", The Justice Story, The New York Daily News, 3/11/07
http://www.nydailynews.com/news/ny_crime/2007/03/11/2007-03-11_let_loose_by_the_governor.html

(4) "New Mexico governor signs measure to abolish death penalty"
DEBORAH BAKER, Associated Press Writer, Originally published Wednesday, March 18, 2009
at 5:21 PM

FOOTNOTE: "Death penalty repeal arguments are false"

In a message dated 3/17/2009 4:37:39 P.M. Central Daylight Time, Sharpjfa writes:

To: Governor Richardson, staff and cabinet and
Corrections Department and Police Agencies and media throughout New Mexico

From: Dudley Sharp, contact info, below

Dear Honorable Governor Richardson:

In addition to all of the pro-repeal arguments being weak or false (see below), the death penalty should remain as the just sanction for some of the worst crimes.

JUSTICE: The death penalty should remain in New Mexico because of justice. New Mexico is currently investigating serial murders which, to date, have reached 14 victims. Leave the death penalty option up to New Mexico jurors, for such cases as this, as well as the rape/murder of children and the murder of police officers and correction workers and other crimes.

1) COST SAVINGS

The LFC fiscal evaluation wrongly found the North Carolina death penalty more expensive than a 20 year "life" sentence. It wasn't. The was the only study cited (1)

Reasonable and responsible protocols, currently in use, will produce a death penalty which will cost less or no more than LWOP. (2)

Example: Virginia executes in 5-7 years; 65% of those sentenced to death have been executed; 15% of their death penalty cases are overturned. With the high costs of long term imprisonment, a true life sentence will be more expensive than such a death penalty protocol. (2)

Most cost studies suffer from major problems, such as a) not crediting the death penalty for allowing plea bargains to a true life sentence (\$300,000 to \$1 million savings or more, for each plea); 2) not including geriatric care for life sentences (cost of \$60,000-\$90,000/year/inmate); c) deceptively inflating costs of executions, based upon putting all the costs of every death penalty case into those executed (see Florida); d) many more such problems, or even worse. (2)

2) MORE PROTECTION FOR INNOCENTS

Of all the government programs in the world, that put innocents at risk, is there one with a safer record and with greater protections than the US death penalty? Unlikely.

Innocents are more protected because of enhanced due process, enhanced incapacitation and enhanced deterrence. (3)

Anti death penalty folks claim that 130 "innocents" have been released from death row, nationally. Fact checking easily uncovers this as a scam. Study reviews have found that 70-83% of those claims are not credible. Possibly 25 "actual" innocents have been identified and released from death row. (4)

There is no proof of an innocent executed in the US, at least since 1900.

There is overwhelming proof that living murderers harm and murder, again. Executed ones don't.

3) 16 recent studies find for DETERRENCE

16 recent studies, inclusive of their defenses, find for death penalty deterrence. No surprise. Life is preferred over death, death is feared more than life. (5)

There is a constant within all jurisdictions -- negative consequences will always deter some - a truism.

NOTE: Repeal proponents bring up that many death penalty states have higher murder rates than non death penalty states. That has nothing to do with the deterrent effect failing, as fully explained to them and you in a previous email. (6)

Whether a jurisdiction has high murder rates or low ones, rather rising or lowering rates, the presence of the death penalty will produce fewer net murders, the absence of the death penalty will produce more net murders.

An analogy. Consider smoking. Whether a jurisdiction has high smoking rates or low ones, or rising or lowering rates, the knowledge of medical problems from smoking will produce fewer net smokers, the absence of any medical problems from smoking would produce more net smokers.

4. STRONG PUBLIC SUPPORT

80% death penalty support, for specific capital murders, such as mass murder, serial murders, rape/murders, terrorism, etc. (6)

-- 82% in the US favor executing Saddam Hussein, In Great Britain: 69%, France: 58%, Germany: 53%, Spain: 51%, Italy: 46%. ; Le Monde (France) , 12/06

-- 81% support Timothy McVeigh's execution - "the consensus of all major groups, including men, women, whites, nonwhites, "liberals" and "conservatives." 16% oppose (Gallup 5/2/01).

-- 85% of liberal Connecticut supported serial/rapist murderer Michael Ross' "voluntary" execution. (Quinnipiac 1/12/05)

-- 79% support death penalty for terrorists (4/26/2007 New York State poll)

-- 78% of Nebraskans support death penalty for "heinous crimes." 16% opposed. 76% opposed legislation to abolish. MPB Public Affairs Poll, 2/14/08)

Most quoted polls wrongly poll for murder, not capital murders. The death penalty is only an option in capital cases. Possibly, 10% of all murder cases are death eligible. Those are the only cases relevant to death penalty polling.

5) THE LEAST ARBITRARY PUNISHMENT

The US death penalty is likely the least arbitrary and capricious criminal sanctions in the US. About 60,000 murders qualified for a death penalty eligible trial, since 1973. 8000 murderers were so sentenced or 13% of those eligible. Based upon pre trial, trial, appellate and clemency/commutation realities and that high percentage (13%) of receiving the maximum sentence (absent mandatory sentences) the death penalty must be the least arbitrary and capricious sanction.

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Respectfully submitted, Dudley Sharp, Justice Matters
 e-mail sharpjfa@aol.com, 713-622-5491,
 Houston, Texas

Mr. Sharp has appeared on ABC, BBC, CBC, CBS, CNN, C-SPAN, FOX, NBC, NPR, PBS , VOA and many other TV and radio networks, on such programs as Nightline, The News Hour with Jim Lehrer, The O'Reilly Factor, etc., has been quoted in newspapers throughout the world and is a published author.

A former opponent of capital punishment, he has written and granted interviews about, testified on and debated the subject of the death penalty, extensively and internationally

- 1) "LFC Fiscal Error: Death Penalty Repeal - For Senate Judiciary Committee Record" email to Senate, 3/9/2009 6:11:28 P.M. Central Daylight Time
- 2) "Cost Savings: The Death Penalty: For Senate Judiciary Committee Record", email to Senate, 3/9/2009 4:45:21 P.M. Central Daylight Time
- 3) "Death Penalty: More Protection for Innocents" NM, email to Governor Richardson, legislature and media, 3/4/2009 2:49:23 P.M. Central Daylight Time
- 4) "The death row 130 "innocents" scam" NM, email to Governor Richardson, legislature and media, 3/4/2009 1:36:11 P.M. Central Standard Time
- 5) "The Death Penalty is a Deterrent - 16 Recent Studies", NM, email to Governor Richardson, legislature and media on 3/4/2009 1:31:35 P.M. Central Daylight Time
- 6) "Death Penalty and Deterrence: Let's be clear" NM, email to Governor Richardson, legislators and media on 3/4/2009 1:52:09 P.M. Central Standard Time

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