

Responsive Philanthropy

IN THIS EDITION

Banning the Juvenile Death Penalty 1
 Success through Funding of Nonprofit Advocacy and Coalition Work

OPINION 2
The Duke's Demise
 Philanthropic Maneuvers
 Don't Excuse Questionable Defense Contracts

National Heritage Foundation: Pushing Tax Laws to the Limit 5

The Story of Saipan 8
 DeLay's Petri Dish and Another Abramoff Gold Mine



Banning the Juvenile Death Penalty

Success through Funding of Nonprofit Advocacy and Coalition Work

By Adam Conner and Betsy Williams

Last year, America stood alone in the world as the only country that still executed minors. Only six other countries had executed minors in the 1990s, and by 2005 all had either abolished the practice or publicly disavowed the execution of minors.

It was not until March 1, 2005, that the U.S. Supreme Court ended juvenile executions in America with its 5-4 decision in the *Roper v. Simmons* case. As Justice Kennedy would write in the majority decision, "In sum, it is fair to say that the United States now stands alone in a world that has turned its face against the juvenile death penalty."

The *Simmons* decision was the culmination of a campaign begun years before that illustrated the power of strategic general operating funding from foundations and effective coalition building among nonprofits.

General operating grants over the last decade gave nonprofits the autonomy to coordinate their efforts and build expertise. From "Banning the Juvenile Death Penalty" continued on page 12.

Foundation Cooperation Was Key to Successful Advocacy Campaign

"Ending the Juvenile Death Penalty" continued from page 1

2002 to 2005, a collaboration of foundations and nonprofits planned a comprehensive campaign for the eventual Supreme Court showdown.

Four foundations, among others, led the way. During the preliminary stage, the John D. and Katherine T. MacArthur Foundation and the Open Society Institute (OSI) supported general research and justice reform. Then, the JEHT Foundation and Atlantic Philanthropies joined OSI for the *Simmons v. Roper* coalition in 2004. This combination of sustained support for a targeted campaign would make victory possible.

Opportunity

The 2002 case of *Atkins v. Virginia*, in which the Supreme Court banned the execution of the mentally retarded, jumpstarted the campaign to abolish the juvenile death penalty. The court determined that executing people who were not fully culpable for their actions was cruel and unusual, by America's "evolving standards of decency." The justices relied on state laws to determine a national consensus, noting that a majority of states either prohibited the execution of the mentally retarded or had eliminated the death penalty entirely, and determined "that death is not a suitable punishment for a mentally retarded criminal." *Atkins* provided the legal logic to use for another legal battle.

A coalition began to organize against the juvenile death penalty in 2002 and would eventually include the American Bar Association (ABA), Juvenile Justice Center, National Coalition to Abolish the Death Penalty (NCADP), Justice Project, Death Penalty Information Center, American Civil Liberties Union (ACLU), Physicians for Human Rights, National Juvenile Defender's Center, and Amnesty International.

In organizational meetings following the *Atkins* decision, the coalition began to lay out a comprehensive strategy that focused on overturning the death penalty in the states, which would then provide the legal ammunition to attack the juvenile death penalty at the Supreme Court using the "evolving standards of decency" argument. "We knew, from a footnote in the *Atkins* opinion, that the Supreme Court counts states, so we wanted to give them states," says David Elliot, the communications director for

NCADP. By 2002, 29 states had banned the juvenile death penalty, compared with the 30 that had outlawed the execution of the mentally retarded before *Atkins*. Another key to winning the case would lie in convincing at least one of two swing votes on the court—the two moderate conservative justices, Sandra Day O'Connor and Anthony Kennedy. O'Connor "was particularly interested in state activity, and the consensus was that the time was right to push for change," says Adam Ortiz, a former Soros Criminal Justice fellow with the ABA's Juvenile Justice Center.

In order to win, the campaign had to take full advantage of each group's strengths. Patti Puritz of the ABA's Juvenile Justice Center took on the role of coordinator, playing "a critical role in convening all of the groups and in fostering collaboration," according to Steven Hawkins of the JEHT Foundation.

The campaign would consist of three primary parts: message, grassroots organizing, and legal strategy. The Justice Project handled the media work; grassroots organizing in the states was split between NCADP, the Juvenile Justice Center, and Amnesty International. The Juvenile Justice Center also coordinated the legal strategy, coalition partners, and amicus briefs, in preparation for any case the Supreme Court would accept.

The Death Penalty Information Center and other organizations provided their assistance while continuing their public education and information campaigns against capital punishment and lobbying for the passage of the Innocence Protection Act in Congress.

Early Funding

This coalition operated to an extent rarely seen in the philanthropic community. Cooperation is often a stumbling point for nonprofit groups accustomed to competing for the same pot of money, but shared goals, good organization, and previous collaboration on the *Atkins* case—all coupled with foundation support—helped things run smoothly and allowed the coalition to pursue its goals.

Many of the groups received general operating support or broad project grants for justice advocacy from OSI. Flexible funding gives groups the freedom to organize themselves and keeps organizations ready to respond to situa-

tions not apparent when the grants were made. Explains Jacqueline Baillargeon of OSI on funding strategy, "Two years earlier, when you're making that grant, it's not clear the court will take up the [juvenile death penalty] case."

Other early funding united groups from different disciplines. The MacArthur Foundation had already been funding efforts against harsh youth crime laws in 1996, bankrolling programs like Northwestern University's Children and Family Justice Center and the Child Welfare League's Juvenile Justice Division. These associations studied how teenage minds work and what that means for the justice system. In 2001, the MacArthur Foundation created the Research Network on Adolescent Development and Juvenile Justice, centered at Temple University, which juxtaposed the scientific research with the legal issues. Since 2000, the foundation has spent over \$23 million advancing juvenile justice reform, creating useful partnerships across disciplines.

Smaller funders also teamed up; the Arca Foundation and the Butler Family Fund sometimes combined resources through the Tides Foundation's Death Penalty Mobilization Fund. Foundations large and small helped build the capacity and expertise of groups central to the juvenile death penalty struggle.

Message

A resonant message was needed, one with the goal of reframing the debate and moving the focus from capital punishment to children. The message gurus refined the emotional sentiments along with the new scientific research to come up with the direct and pointed message "Kids are different."

Integrated in their powerful argument was new scientific research, including the MacArthur Research Networks' banner study "Less Guilty by Reason of Adolescence," by Laurence Steinberg and Elizabeth Scott, that showed adolescents' brains work differently from adults' brains. This brought a new fact-based approach to a traditionally emotional argument.

A resource kit containing scientific research and organizations' testimonials and briefs was compiled. Entitled "Kids are Different: Evolving Standards of Decency and the Juvenile Death Penalty," the kit was then distributed across the country.

A message alone is not enough to shift public, legislative, or Supreme Court opinion. The crux of the "evolving standards of decency"

legal strategy depended on successful lobbying of the state legislatures by the grassroots organizations.

NCADP and the Juvenile Justice Center, with Amnesty International, split up the states and began their work with statewide lobbying and a grassroots campaign that included print and radio advertising. Their first success came in Wyoming when the Legislature agreed to consider the measure. To the surprise of many, the bill encountered little opposition and was passed overwhelmingly. On March 3, 2004, Governor Dave Freudenthal signed it, making Wyoming the 30th state in America to ban the juvenile death penalty.

On the same day, Wyoming's neighbor South Dakota became the 31st state to ban the execution of minors. The bill, signed by Governor Mike Rounds, brought to a close a hard-fought campaign that had culminated in an exceedingly close vote in the South Dakota State House, where the measure passed by only two votes.

David Elliot of NCADP recalls the pivotal role that young organizers played: "We organized students on college campuses. ... We taught them to lobby their state legislators. ... The students flipped two legislators. So the students gave us the victory in South Dakota."

Roper v. Simmons Arises

The long-expected case that would adapt the *Atkins* argument for juveniles surfaced in 2003. From Missouri's death row, Christopher Simmons asked the state Supreme Court to reconsider his sentence in light of *Atkins*. In 1993, 17-year-old Simmons and a younger friend had bound and drowned a woman from their hometown in a confused robbery attempt. Without the aid of a lawyer or even his parents, Simmons waived his Miranda rights, made a confession after about two hours of interrogation, and reenacted the crime on videotape. He pled not guilty at trial, but his earlier admissions ensured prosecutors a conviction and death sentence.

The Missouri Supreme Court declared it unconstitutional to execute a juvenile offender like Simmons, audaciously applying *Atkins* logic in an unusual challenge to the U.S. Supreme Court. This bold argument, combined with four justices' existing wishes to address the juvenile death penalty, convinced the high court to accept the case in January 2004. Simmons' story was hardly the most sympathetic, but this would be the case to settle the issue of the juvenile death penalty.

The *Simmons* decision was the culmination of a campaign begun years before that illustrated the power of strategic general operating funding from foundations and effective coalition building among nonprofits.

Funders and coalitions can take away two central lessons.

First, years of general operating support and grants for previous projects positioned these groups to be effective.

Consistent funding can establish the capacity and expertise for important projects later on and gives groups the leeway to create the coalitions they consider productive.

Organizing Around *Simmons*

Once the Supreme Court agreed to hear the case, opponents of the juvenile death penalty knew they needed coordination and funding. Early in 2004, nonprofit leaders invited representatives from OSI, the JEHT Foundation, and Atlantic Philanthropies to their planning meeting. The advocates then established who was responsible for each area of the campaign. Then and there, they submitted the proposal; the foundations studied it, figured out "which pieces of it made the most sense," according to Baillargeon, and agreed to fund the effort.

During the almost yearlong "Campaign to End Juvenile Executions," the three foundations granted the coalition a total of \$1.55 million. Meanwhile, the foundations continued supporting related issues, spending \$4.4 million on capital punishment advocacy during 2004.

From the beginning, the coalition was united by past work and common purpose. OSI had funded some groups before, and many advocates were veterans of the *Atkins* campaign. Steven Hawkins' experience on both sides of the checkbook, as a senior program manager at the JEHT Foundation and former executive director of the NCADP, helped strengthen the coalition.

Taking It to the Court

While the advocates had strengthened the nationwide consensus against executing juvenile offenders, the legal team had to convince the U.S. Supreme Court of these results. Patti Puritz of the Juvenile Justice Center recruited a broad, impressive array of organizations to submit amicus briefs.

The effort yielded 16 separate amicus briefs, signed by 17 Nobel Peace Prize laureates; professional organizations, including the American Medical Association and American Bar Association; and other respected experts. These amici promoted three core arguments. First, a medical argument asserted that children are different: As the MacArthur Research Network showed, their brains are not fully developed for planning and self-control, making youths less culpable for their crimes, less competent to stand trial, and less deterred by the existence of a death penalty. Second, international law and human rights standards prohibit the execution of juvenile offenders. Third, many Americans oppose the policy, as shown by widespread religious opposition to the death penalty, many laws that specially protect those under age 18, and juries' reluctance to actually impose the death penalty on young offenders. This nationwide consensus against the juvenile death

penalty was most clearly demonstrated by the long and growing list of states that banned the juvenile death penalty.

The Supreme Court heard the *Simmons* case in October 2004, and on March 1, 2005, abolished the juvenile death penalty. Rebecca Rittgers of Atlantic Philanthropies recalled that the advocates "[kept] messages consistent, simple, and to the point," and these very arguments became the basis of the majority opinion. The decision, written by swing voter Justice Kennedy and joined by the four previously supportive justices, drew on the three points presented in the amicus briefs.

Based on the successful advocacy work by coalition members in South Dakota, Wyoming, and elsewhere, governors, state legislatures, judges, and juries had demonstrated their burgeoning reluctance to allow juvenile executions; to the U.S. Supreme Court, this showed a consensus that the juvenile death penalty was unacceptable. Further, based on scientific evidence, the court considered execution disproportionate to juveniles' level of responsibility and thus a cruel and unusual punishment: "The differences between juvenile and adult offenders are too marked and well understood to risk allowing a youthful person to receive the death penalty despite insufficient culpability." The decision acknowledged international law and human rights arguments as "respected and significant confirmation for our own conclusions," without considering them binding.

With the *Roper v. Simmons* decision, the Supreme Court ended America's shameful distinction of being the last country in the world to officially permit the juvenile death penalty. About 70 juvenile offenders across the country were spared from death sentences.

Ultimately, this victory helps change how Americans think about the death penalty. As Richard Dieter of the Death Penalty Information Center puts it, "[Juries] are returning more life sentences: less death sentences and more life sentences."

The coalition struck a remarkable balance, running a disciplined campaign with a consistent message and strategy, without any one organization or funder taking too much control. Coalitions must be orderly enough to merit funding. In a public policy roundtable, NCRP founder Pablo Eisenberg explained, "Foundations hesitate to fund coalitions because they can't control the outcome. ... Yet increasingly on public policy issues [coalitions] are proving to be essential."¹

This coalition demonstrated its organization by involving foundations throughout its early planning. "Good, coordinated campaigns that have clear lines of authority and responsibility and clear targets and objectives can pay off," offers Hawkins. "The groups, I think, did a very good job keeping funders in the loop," and the three foundations rewarded the groups with continuing commitment.

Lasting Impacts and Lessons

The anti-juvenile death penalty campaign would ultimately succeed due to the coordination and commitment of the member groups, as well as foundations' trust and flexibility. Baillargeon of OSI declares, "This is a very good example of how, on the ground, the advocates and funders came together in a way that leveraged everyone's resources."

The victory was a testament to the benefits of funder-advocate coalitions, and foundations that fund future public policy coalitions. Funders and coalitions can take away two central lessons. First, years of general operating support and grants for previous projects positioned these groups to be effective. Consistent funding can establish the capacity and expertise for important projects later on and gives groups the leeway to create the coalitions they consider productive.

Second, certain funding arrangements may help unite a coalition. Close collaboration on

strategy and budgeting, initiated by the advocates or funders, builds trust. Coordinated, responsive funding reduces competition between grantees and increases their capacity, effectiveness, and, ultimately, their chances for success.

Often in social justice advocacy the distance in reaching long-term objectives can seem overwhelming, making it difficult to keep advocates motivated and foundations committed to funding. As John Terzano notes, "You need the dedication and commitment for the long haul. Anyone who wants to engage in social justice change has to take the long view." ☺

Notes

1. Georgetown Public Policy Institute, *The Cost of Caution: Advocacy, Public Policy, and America's Foundations* (April 21, 2005, National Press Club, Washington, D.C.).

Adam Conner and Betsy Williams have joined NCRP this summer to assist with development, communications, and research. Conner, a senior at George Washington University majoring in political communication, hails from Los Alamos, New Mexico. Williams, of San Jose, California, will be a senior at Yale University, studying civil society and urban governance within the major of ethics, politics and economics.

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Publication discounts. Members receive a 50% discount off NCRP's groundbreaking reports, including *Funding the Culture Wars; Philanthropy, Church and State*(2005); *Axis of Ideology: Conservative Foundations and Public Policy* (2004), *State of Philanthropy 2004*.

3
E-mail updates and action alerts. Receive our bi-monthly "NCRP in the News" email, which contains timely NCRP statements and commentary on philanthropic issues, as well as media coverage of NCRP that you may have missed.

4
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