

ENGAGING UNLIKELY ALLIES TO ACHIEVE CRIMINAL JUSTICE REFORM



JUDGES OPINION LEADERS
POLICE OFFICERS
CORRECTIONS OFFICIALS

GOVERNORS LEGISLATORS BUSINESS LEADERS
PROSECUTORS COMMUNITY LEADERS
THINK TANKS RELIGIOUS LEADERS VICTIM ADVOCATES

THE CONSTITUTION PROJECT



Safeguarding Liberty, Justice & the Rule of Law

ENGAGING UNLIKELY ALLIES TO ACHIEVE CRIMINAL JUSTICE REFORM

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Founded in 1997, The Constitution Project (TCP) is a constitutional watchdog that specializes in bringing together unlikely allies—experts and practitioners from across the political spectrum—to create bipartisan consensus on safeguarding the U.S. Constitution. Through its Criminal Justice and Rule of Law Programs, TCP has spearheaded initiatives working with a broad range of unlikely allies on a wide variety of issues. To learn more about TCP, visit our website at www.constitutionproject.org.

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For several decades, the criminal justice reform effort has been dominated by a divisive debate between those labeled “tough on crime” (*i.e.*, calling for ever harsher punishments, diminution of rights, increased criminalization, etc.) and those labeled “soft on crime” (*i.e.*, calling for robust protection of defendants’ rights, shorter sentences, etc.). Fortunately, those labels have recently begun to dissipate, 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.

Those who have long advocated for criminal justice reforms—who have traditionally included liberals, civil liberties advocates, criminal defense attorneys, prisoner advocates, etc.—must learn how to operate in this shifting paradigm to achieve criminal justice reform. They cannot succeed by continuing to “preach to the choir.” Rather, they must build relationships with these new “unlikely allies” who are now joining them in calling for reform. And, they must learn to incorporate the voices of these unlikely allies into campaigns for reform. In order to persuade people who fear our society is too lenient on criminals that reform is needed, advocates must pay special attention to who the messenger is and what the message is. Incorporating unlikely allies will enable advocates to broaden the tent of reformers, often by using different language, modified solutions, and other non-traditional means.

The term “unlikely allies,” as used in this manual, is intended to encompass a wide array of individuals, including prosecutors, judges, conservative opinion leaders, Republicans, victim advocates and others. They are not the traditional, expected voices who have, for many years, called attention to the injustices of the criminal justice system. Thus, they can be particularly persuasive and effective in calling for change to the system. They can provide access to policymakers, to professional colleagues, and to the press that more traditional criminal justice reformers often cannot. They can appeal to new audiences and change minds. Their credibility cannot be ignored and cannot be underestimated.

Over the past few years, the voices of unlikely allies have begun to emerge more prominently in the debate surrounding criminal justice reforms. These individuals have recognized that many current policies have not reduced crime, have increased recidivism, and have cost taxpayers huge and unnecessary sums of money. They are speaking out for new solutions and encouraging their colleagues to join them in supporting reform. In January, for example, Republican presidential candidate Newt Gingrich and Prison Fellowship leader and former Republican state legislator Pat Nolan published an Op-Ed in the *Washington Post* urging “conservative legislators to lead the way in addressing an issue often considered off-limits to reform: prisons.”¹ Around the same time, a group calling itself “Right on Crime” released a statement of principles signed by a host of conservative opinion leaders.²

Americans for Tax Reform President Grover Norquist wrote a column in the conservative *National Review* calling on conservatives “to stand up for criminal-justice policies that ensure the public’s safety in a cost-effective manner.”³ And the 2011 Conservative Political Action Committee (CPAC) conference contained a panel entitled, “The Conservative

Case for Criminal Justice Reform,” in which Rep. Ted Poe (R-TX) and David Keene (then-chair of CPAC and the American Conservative Union) participated.

However, the new conversation about criminal justice reform is just beginning. The traditional debate continues to dominate discussion in Congress and in many states and localities across the country. Especially during campaign season, candidates still accuse each other of being “soft on crime” and tout their “tough on crime” credentials.⁴ States still experience political gridlock that stymies reforms because legislators fear being labeled “soft on crime.”⁵

Where the traditional debate continues to dominate, the time is ripe for those within the criminal justice advocacy community to develop campaigns that effectively incorporate the growing number of available unlikely allies. Traditional language, strategies and tactics may need to be modified to incorporate the unlikely allies who can prevent or push back against false labels of “soft on crime,” and who can help to achieve meaningful criminal justice reforms.

Since its creation in 1997, The Constitution Project (TCP) has brought together the left and the right to achieve consensus surrounding tough constitutional issues, including many issues within the criminal justice system, like the death penalty, the right to counsel and sentencing laws. TCP has been particularly successful in developing relationships with unlikely allies and garnering their support for criminal justice reform. This manual, which is based on TCP’s experience working with unlikely allies, is intended to educate other criminal justice advocates about how to effectively incorporate unlikely allies into reform campaigns around the country.

TRADITIONAL LANGUAGE, STRATEGIES AND TACTICS MAY NEED TO BE MODIFIED TO INCORPORATE THE UNLIKELY ALLIES WHO CAN PREVENT OR PUSH BACK AGAINST FALSE LABELS OF “SOFT ON CRIME,” AND WHO CAN HELP TO ACHIEVE MEANINGFUL CRIMINAL JUSTICE REFORMS.

Unlikely allies are 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 your issues. Consider a few examples of the attention that has been paid to “new voices” calling for criminal justice reform in conservative and mainstream news outlets across the country:

• **NAACP, Right Urge Alternative to Prison for Nonviolent Felons**

Ralph Z. Hallow, *Washington Times*, April 6, 2011

“Leaders of the nation’s best-known civil rights organization are teaming up with some of conservatism’s top names to call for radical change in the costly way many states deal with convicted felons.”

• **Unlikely Ally**

Editorial, *Dallas Morning News*, February 17, 2011

“One badly needed reform in the state’s criminal justice system has received a boost from an unlikely place—a North Dallas conservative Republican.”

• **Death Makes for Odd Alliance: One Approved Many Executions, the Other Spends Life Fighting Them**

Allan Turner and Mike Tolson, *Houston Chronicle*, November 13, 2010

“It was, at the very least, an odd political sight: former Texas Gov. Mark White, who had sent almost a score of killers to their executions, rubbing shoulders with New York lawyer Barry Scheck at a downtown news conference.”

• **Right and Left Join Forces on Criminal Justice**

Adam Liptak, *New York Times*, November 23, 2009

“In the next several months, the Supreme Court will decide at least a half-dozen cases about the rights of people accused of crimes involving drugs, sex and corruption. Civil liberties groups and associations of defense lawyers have lined up on the side of the accused. But so have conservative, libertarian and business groups. Their briefs and public statements are signs of an emerging consensus on the right that the criminal justice system is an aspect of big government that must be contained.”

• **Unlikely Allies on a Former Wedge Issue**

Samuel G. Freedman, *New York Times*, June 28, 2008

“On the surface a redoubt of the religious right, firmly rooted in evangelical Christianity and conservative politics, the Prison Fellowship Ministries’ liberal position on [prison reform] underscores the increasing irrelevance of such rigid categories.”

• **Unlikely Allies Back Three-Strikes Change**

Jill Leovy, *Los Angeles Times*, January 11, 2006

“A new effort to restrict California’s controversial three-strikes law to violent offenders has been launched by strange bedfellows—Los Angeles County’s top prosecutor and a prominent criminal-defense lawyer.”

The unexpected nature of unlikely allies' participation can be particularly persuasive. Unfortunately, the usual suspects often sound (at least to some) like broken records and 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. Unlikely allies provide a number of benefits; they can:

- Make people, and especially those inclined to oppose reforms, stop and pay attention.
- Add credibility to calls for reform and reinforce the soundness of proposals.
- Reach different audiences.
- Provide access to and mobilize different constituencies.
- Influence different individuals than do traditional criminal justice reform advocates and convince different policymakers.
- Help advocates craft arguments and messages that resonate with new and diverse constituencies.
- Identify messages that are likely to alienate important individuals or groups.

Criminal justice reform campaigns will benefit tremendously from the participation of unlikely allies as they help to achieve broader support in areas where advocates have failed in the past.



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

Criminal Justice System	Political World	Others
<ul style="list-style-type: none"> • Prosecutors • Police officers • Judges • Victim advocates • Corrections officials 	<ul style="list-style-type: none"> • Conservative opinion leaders • Conservative think tanks • Federal, state and local legislators • Governors & other officeholders 	<ul style="list-style-type: none"> • Religious leaders • Business leaders • Community leaders • Influential individuals

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 can be some of the most persuasive 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.
- 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, 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 even if prosecutors, judges or law enforcement officials are retired or have moved on to another career, they still may carry considerable weight as former prosecutors, judges, 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 have been constrained by their office as to what they could say.

The Political Right

Conservatives have begun to embrace criminal justice reforms in a way that has not been witnessed over the past 30 years. The Right on Crime movement, launched in December 2010, has highlighted the support of many conservative opinion leaders for reforming the criminal justice system. Further, many of the successful reform campaigns have happened in traditionally conservative states with Republican-dominated legislatures—such as Texas, Kansas and South Carolina. Certain conservatives and Republicans are quickly becoming allies on criminal justice reforms, often

motivated by the fact that the current criminal justice system is extraordinarily expensive and wasteful, not to mention counterproductive. Traditional reformers must cultivate relationships with conservatives who are open to reforms, even if their motivations for reforming the system differ significantly from those of some advocates.

Religious Leaders

Around the country, groups have cultivated relationships with many types of unlikely allies beyond those in the criminal justice system and conservatives. One example is religious leaders who often have access to much larger constituencies (i.e., their congregations and related congregations) than 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 for Governor Quinn of Illinois, who is Catholic, when he was deciding whether to sign the death penalty repeal bill enacted in early 2011.⁶ 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.

Business Leaders

Another fertile ground for support is the business community. A particularly effective campaign highlighting the support of business leaders for justice reform was implemented by the Pew Center on the States last year.⁷ 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 certain criminal justice reforms are good for the economy and the health of the community 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 criminal justice advocates do not have.

Beyond the Obvious Unlikely Allies

There may be others within your community or your state whom you can cultivate as allies. One way to start brainstorming is to make a list of those who are influential in your community or your state and research their backgrounds. Don’t be afraid to contact them. All they can do is say no, and they may surprise you and say yes. Here are some clues to whether they are worth contacting:

- Have they or a close family member or friend had contact with the criminal justice system? Personal interactions with the system often fuel support for 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. Monitor your local media carefully for such statements.
- Have they taken positions on other issues beyond criminal justice suggesting they may be sympathetic to certain criminal justice issues? For example, someone who has expressed concern over child welfare may be open to supporting juvenile justice reforms.



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COLLABORATION

As a first step to identifying unlikely allies who may be helpful to you, contact The Constitution Project (TCP). TCP brings together unlikely allies—experts and practitioners from across the political spectrum—in order to promote criminal justice reforms. TCP has created a Clearinghouse of New Voices on Criminal Justice Reform, which contains the names of myriad unlikely allies from all over the country who are supportive of a host of criminal justice reforms. This password-protected Clearinghouse is available to advocates to search for names (though, for privacy reasons, TCP does not make the individuals’ contact information available). TCP can help you determine if there are individuals within our Clearinghouse who may be helpful to you, and can guide you on connecting and working with them. TCP will either reach out to the individuals directly on your behalf or will direct you to another advocacy organization that has an existing relationship with the individuals.

TCP Clearinghouse of New Voices on Criminal Justice Reform

What it is: A national database of unlikely allies whom TCP has identified as interested in criminal justice reforms.

How it works: Advocates contact TCP for assistance on particular criminal justice reform campaigns on the federal, state and local levels, and TCP matches unlikely allies to those campaigns. TCP will reach out to the unlikely allies on advocates’ behalf, or put advocates in touch with other advocacy organizations who have a relationship with a particular ally. TCP encourages the entire criminal justice community to add names of unlikely allies to TCP’s database so that the community has a centralized resource for identifying unlikely allies and does not duplicate contact with these individuals.

For more information: Contact Mary Schmid Mergler, mmergler@constitutionproject.org.

Identifying unlikely allies requires skills that are no different than what advocates do every day: networking. You will need to begin building a network of individuals on whom you can call when certain issues arise:

- Attend panel discussions, presentations and meetings where unlikely allies will be.
- Scan the newspapers and media to find individuals quoted 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 discover unlikely allies.

Be sure to use your existing contacts and find out who each of them knows. For example, ask your board members and influential colleagues if they will sit down with you to go through their existing contacts. Make a list of those who could help your advocacy campaign, and draft an email that your colleague can send to introduce you to their friends who are unlikely allies. Meet with them and ask them for more names. You will be surprised at how many names you can gather.



ENGAGING UNLIKELY ALLIES TO ACHIEVE CRIMINAL JUSTICE REFORM
CAMPAIGN ROLE

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, though an initial chat with them so you can write in their “voice” is usually helpful. Be open to changes in language or in substance that they make, even if the piece does not sound exactly as you would like (so long as it still advances your position). For example, recently the State of Texas was about to execute a man whose evidence of mental retardation had never been considered in federal court. TCP worked with its Death Penalty Committee Co-Chair Mark White on an Op-Ed, but that Op-Ed did not call for complete clemency, as some death penalty reform advocates would have wanted. Rather, as a former Governor of Texas under whom 19 people were executed, White thought a more appropriate “ask” was for Governor Perry to stay the execution and conduct an independent investigation of Mathis’ claims.⁸

Newspaper opinion page editors are also particularly receptive to publishing opinion pieces from “strange bedfellows,” i.e., unexpected pairs of authors, like a former U.S. attorney and former federal defender in your district, or two particularly influential authors. TCP recently 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, but both are particularly well-respected in Georgia: Justice Norman S. Fletcher, the former Chief Justice and Georgia Supreme Court, and Larry D. Thompson, the U.S. Deputy Attorney General in the George W. Bush administration and a former U.S. Attorney for the Northern District of Georgia.⁹

Unlikely allies can also 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 by 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. 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(s) they represent. 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 or destructive.

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Contacting Policymakers

Unlikely allies can also advocate for reform 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 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, Florida's state legislature was recently considering a bill to split the state supreme court, giving the governor the opportunity to make a significant number of court appointments in 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 press conference to outline why the legislation was a bad idea.¹⁰ One particular former supreme court justice traveled to the legislature and personally met with many influential legislators to explain to them that the current state supreme court did not need changing.¹¹ This message was more persuasive coming from a former supreme court justice than from an anti-death penalty group, and 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, a year ago, TCP organized a letter from more than 30 former judges and prosecutors that was sent to Ohio Governor Ted Strickland requesting clemency for Kevin Keith, who was scheduled to be executed despite compelling evidence of his innocence.¹² The letter was discussed in a *New York Times* article about the case,¹³ and the Governor ended up granting clemency.

TCP has worked on similar letters to Congress and state legislators concerning pending legislation. For example, TCP recently put together a letter from former prosecutors and judges, primarily from border states, in support of legislation that would provide judicial review for foreign nationals on death row who were denied consular access.¹⁴ Around the same time, Texas was preparing to execute Humberto Leal Garcia, who would have been affected by this legislation, and 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, in an innocence case in Florida, TCP filed an *amicus* brief from two very prominent Floridians, as well as William S. Sessions, director of the FBI when the CODIS database was formed (since the eligibility of a DNA sample for uploading into CODIS was at issue in the case).¹⁵ TCP has also filed briefs in the Supreme Court from larger groups of judges and/or prosecutors in cases where TCP believed those voices would be particularly influential to the Court. For example, TCP filed a brief in the case of Charles Hood who was on death row in Texas despite the fact that the judge and prosecutor in his case had an affair. TCP gathered a group of former judges and prosecutors to decry just how inappropriate this behavior was based on their experience.¹⁶

Eliminate “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 with two diametrically opposing points of view, often with the prosecutors’ association 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 disfavor it, there’s no need to discuss the morality of the death penalty. Maybe you can agree that the system convicts too many innocent people or makes too many mistakes. That, not the morality of the death penalty, should be the starting point for a conversation in which you are asking them to support for badly-needed reforms. Often, even those who support capital punishment in the abstract end up opposing it because they learn more about the system and come to believe that the problems with the system will never be sufficiently repaired.

Using 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, corrections officials are particularly suited for prison reform advocacy; former prosecutors of capital crimes are particularly appropriate for death penalty reforms, etc. This is not to say that these 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 state, whereas someone from inside the state 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 mulled whether to sign the bill.¹⁷

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Some individuals may be more swayed by party than experience—i.e., someone with strong Republican credentials would be more influential with a particular policymaker than an elected Democratic prosecutor, despite the



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MESSAGING

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 in creating 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 one develops a relationship with an unlikely ally who proves to be a particularly good spokesperson on an issue, one may tend 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, a danger develops that you will transform 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. Also, share the names of unlikely allies with TCP to add to the Clearinghouse, so the community will know who has worked with particular unlikely allies and on what issues, and the risk of overuse will be diminished.



Advocate for Justice, Not Defendants

When speaking about the need for reform, criminal justice advocates are oftentimes tempted to minimize the horrendousness of particular crimes or to fail to acknowledge the societal harms that crime creates generally. Advocates may see things from the defendant’s perspective and believe that by acknowledging a victim’s pain or the community suffering and damage due to crime that they are losing the argument in favor of reform. In a recent panel discussion on Capitol Hill, David Keene (former chair of the American Conservative Union and member of Right on Crime) discussed how criminal justice advocates—even when advocating for sound policies—may fail to generate support for such policies, because they approach issues only from a defendant’s perspective:

“Those who have favored many of the [criminal justice] reforms that all of us might support have managed over the years to position themselves as ‘friends of the criminal’ and have argued that what they’re doing is advocating for criminals or for offenders, as if the moment that you rob the 7-11 you become a victim of society . . . and are therefore treated as a victim.”¹⁸

Mr. Keene’s comments reveal that criminal justice advocates must consider how to reposition themselves to sound like advocates for *justice*, not advocates for *criminal defendants*. Remind yourself that your role as a policy advocate is not the same as that of a defense attorney. A lawyer is bound to act in his or her client’s interests. An advocate is not, and will win credibility by approaching an issue with honesty and common sense: 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. An example is the well-known case of the Scott Sisters, who were recently paroled by Mississippi Governor Haley Barbour. Many persuasively argued that the sentences that the Scott Sisters had received were excessive; the sisters received life sentences for participating in a robbery despite the fact that they had no previous criminal record and the robbery netted very little money. However, consider the descriptions of their crimes from two sources:

- “It was under the unimaginably harsh laws of Mississippi that the now-famous Scott Sisters, Jamie and Gladys, were sentenced to two consecutive life terms in state prison for a robbery in which they stole \$11 when they were teenagers.”¹⁹
- “The Scotts were arrested on Christmas Eve 1993, when Jamie was 21 and Gladys 19, and they were convicted the following year on charges that they led two men into an ambush, during which the men were robbed of about \$11 at gunpoint, according to the trial transcript. The precise amount of money involved in the holdup was never established. No one was injured during the crime.”²⁰

A vertical text box with a dark, textured background. The text is in a light, serif font, all caps, and is centered. It reads: "CRIMINAL JUSTICE ADVOCATES MUST CONSIDER HOW TO REPOSITION THEMSELVES TO SOUND LIKE ADVOCATES FOR JUSTICE, NOT ADVOCATES FOR CRIMINAL DEFENDANTS."



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COMMUNICATION

The first description is from an advocacy perspective and the second from a news outlet. The first fails to acknowledge the gun or the violent nature of the crime, making it seem as if the Scott Sisters had merely pickpocketed \$11 from the victims. If you provide a description like the first, and those you wish to persuade later read the second description, you will have lost considerable credibility. Acknowledge the truth about the harm of the crime, even while advocating that certain reform or action is necessary.

Acknowledge Victims

Relatedly, another way criminal justice advocates reduce their credibility is by failing to name the victims of serious, violent crimes. When talking about particular cases, numerous advocates begin with a description of how the defendant has been harmed, providing no details about the crime for which he or she was convicted. Advocates must stop this practice and name the victim and accurately describe the crime. Where appropriate, even acknowledge that the defendant behaved wrongly and deserved some punishment. 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, in your discussions with them. Take conservative unlikely allies, for instance. The Right on Crime website provides significant guidance about how some conservatives are presently talking about criminal justice. It contains several conservative principles that motivate the Right on Crime signatories to support reform, including public safety, transparency, accountability, cost-effectiveness, reducing victimization, and personal responsibility.²¹ These are not necessarily the same motivations for many traditional criminal justice advocates—who might rank fairness, racial justice, and civil liberties as some of their motivating principles. 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 reforms from conservative states supported by Republican state legislatures and governors—in other words, don't talk about Michigan when you can talk about Texas. 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

Some of the unlikely allies with whom you form relationships will have been involved in the criminal justice system (e.g., as prosecutors or judges), and therefore know what you mean when you use jargon, acronyms and legalese. However, many influential unlikely allies, as well as some of your target audience, may be put off by a failure to speak in plain language. Be aware of how often you use jargon and instead speak in straight-forward language understandable to those without law degrees and who have no experience in the criminal justice system.

Idealism

“Idealism” does not generally have negative connotations, but idealism can cause problems when working with unlikely allies. An idealist not only wants others to support a reform, but also want them to support it for the “right” reasons. Consider this excerpt from a *New York Times* Op-Ed:

“Many have given up all hope of persuading the white electorate that they should care about the severe racial disparities in the criminal justice system or the racial politics that birthed the drug war. It’s possible now, they say, to win big without talking about race or ‘making it an issue’ . . . Surely the Rev. Dr. Martin Luther King Jr. would have rejected that advice.”²²

The Op-Ed goes on to explain that advocates should keep race central to the dialogue about criminal justice reform. This is a powerful piece by a very well-respected author, and messages like hers are important. However, such a position is a potential pitfall when attempting to recruit and work with unlikely allies.

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

A grudge-holder blames certain political parties, groups or individuals for the mistakes of the past and the present deficiencies in the criminal justice system. Not only does he or she place blame, a grudge-holder wants the responsible parties, groups, etc. to admit responsibility for the consequences of those mistakes. Take for example this advocate’s response to the Right on Crime movement:

“I believe before Gingrich, Nolan and those other conservatives who founded ‘Right On Crime’ can propose a reform of the judicial and criminal justice systems, they should first acknowledge responsibility for driving up the numbers of arrests, prosecutions and incarcerations in the first place.”²³

The grudge-holder needs to acknowledge that the apology they seek will 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 for 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.

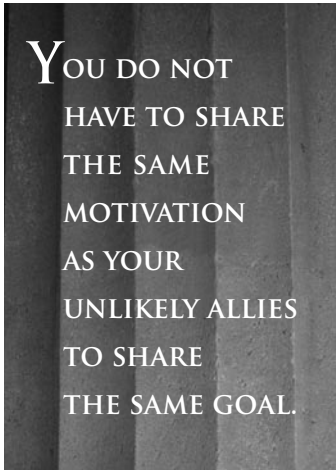
Purists

It is true that 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. Along those lines, being a purist may mean failure; some compromise will likely be necessary. Purists view reform in an all-or-nothing context. They are not willing to support incremental reforms because anything short of their end

goal is viewed as a defeat, *e.g.*, a drug law reform advocate who will not support court-ordered treatment because it ultimately makes the case for legalization weaker; or a sentencing advocate who will not support 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 100%.

Lack of Awareness

Working with unlikely allies requires that criminal justice reform advocates set aside fear and mistrust that they may have harbored towards those who have traditionally been perceived as their adversaries in this fight. Working relationships obviously require trust and open communication and putting aside blame. *However*, trust and open communication does not equate to being blind to your differences of opinion. You will probably find that you do not agree with your unlikely allies on all aspects of criminal justice reform. So, be aware of the areas of disagreement. Of course, you cannot control what your unlikely allies do, but you do not have to provide a platform for your unlikely allies to advocate for policies you do not support. So, before interviews with the media or meetings with policymakers that you have arranged, define the scope of the conversation and make certain areas of discussion (*i.e.*, those areas on which you and your unlikely allies disagree) off-limits, if at all possible.



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Unlikely allies significantly increase the effectiveness of criminal justice reform campaigns. They add considerable credibility to calls for change and reach new audiences. TCP has been bringing unlikely allies together for over 15 years, reaching consensus among bipartisan, diverse groups of individuals concerning divisive criminal justice issues. TCP has collected the names of many of the unlikely allies with whom TCP has worked over the years in our Clearinghouse of New Voices for Criminal Justice Reform. As you work to incorporate unlikely allies into your campaigns, call on TCP to identify new voices as well as new strategies for using these voices.



ENGAGING UNLIKELY ALLIES TO ACHIEVE CRIMINAL JUSTICE REFORM
ENDNOTES

1. Gingrich & Nolan, *Prison reform: A smart way for states to save money and lives*, Wash. Post, Jan. 7, 2011.
2. Available at <http://www.rightoncrime.com/wp-content/uploads/2011/06/RightOnCrime-Statement-of-Principles.pdf>.
3. Grover Norquist, *Conservative Principles and Prison*, National Review, Feb. 10, 2011.
4. See, e.g., Stephen Shurtleff, *New parole bill protects the community*, Concord Monitor, Oct. 2, 2010 (concerning the New Hampshire gubernatorial election in which the Republican candidate attacked the incumbent Democratic governor for signing a bill that the Republican candidate claimed let violent inmates out of prison early; in reality, it provided needed supervision to those leaving prison).
5. See, e.g., Marisa Lagos, *'Political paralysis' in Calif. over prison reform*, San Francisco Chronicle, June 13, 2011 (describing the fear of being soft on crime as the reason the legislature has failed to address the massive prison overcrowding in California).
6. See, e.g., Rick Pearson, *Quinn: Archbishop Tutu lobbied for death penalty ban*, Chicago Tribune, Feb. 24, 2011; Samuel G. Freeman, *Faith Was on the Governor's Shoulder*, Chicago Tribune, Mar. 25, 2011.
7. See *Right-Sizing Prisons: Business Leaders Make the Case for Corrections Reform*, Pew Center on the States, Jan. 2010, available at http://www.pewcenteronthestates.org/report_detail.aspx?id=56721.
8. Mark White, Op-Ed, *Justice demands a review in Texas death penalty case*, Dallas Morning News, Jun. 16, 2011.
9. Norman S. Fletcher & Larry S. Thompson, Op-Ed, *2004 Suspect Deserves Speedy Trial*, Oct. 7, 2010.
10. Press Release, Floridians for Fair & Impartial Courts, *Coalition to lawmakers: Impartiality of our Courts is Non-Negotiable* (Apr. 14, 2011), available at <http://www.fairandimpartial.com/2011/news-release/>.
11. See, e.g., Raoul Cantero, Op-Ed., *Florida Supreme Court does not need more members*, Miami Herald, Apr. 24, 2011, available at <http://www.miamiherald.com/2011/04/24/2181040/former-justice-cantero-florida.html#ixzz1SeIRaNRQ>.
12. Available at <http://www.constitutionproject.org/pdf/484.pdf>.
13. Bob Driehaus, *Unusual Alliance Protests Ohio Execution*, New York Times, Aug. 9, 2010 ("An unlikely array of Republicans and Democrats, attorneys general and federal and state judges and prosecutors has lined up to fight the execution of a death row inmate many believe to be innocent.")
14. Available at http://www.constitutionproject.org/pdf/61411_prosecutorsjudgescongressletter_consularrights.pdf.
15. Available at <http://www.constitutionproject.org/manage/file/409.pdf>.
16. Available at <http://www.constitutionproject.org/pdf/378.pdf>.



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17. See Deborah Baker, *Jimmy Carter writes to NM gov about death penalty*, Associated Press, Feb. 25, 2009.
18. Video: *Smart On Crime—Public Safety, Fiscal Responsibility, and the Administration of Justice: Lessons from the States Panel* (Jun. 8, 2011), available at http://www.youtube.com/watch?v=NvJpBwJQwVY&feature=channel_video_title.
19. ACLU Blog of Rights, *Mississippi's Vicious Cycle of Overincarceration* (Apr. 1, 2011), available at <http://www.aclu.org/blog/drug-law-reform-racial-justice/mississippi-vicious-cycle-overincarceration>.
20. Timothy Williams, *Jailed Sisters Are Released for Kidney Transplant*, New York Times, Jan. 7, 2011.
21. See Right on Crime Statement of Principles, available at <http://www.rightoncrime.com/wp-content/uploads/2011/06/RightOnCrime-Statement-of-Principles.pdf>.
22. Michelle Alexander, Op-Ed, *In Prison Reform, Money Trumps Civil Rights*, New York Times, May 14, 2011.
23. Bob Sloan, *Slave Labor - Do Gingrich and Nolan really want judicial and prison reforms?*, Daily Kos, Jan. 10, 2011, available at <http://www.dailykos.com/story/2011/01/10/934289/-Slave-LaborDo-Gingrich-and-Nolan-really-want-judicial-and-prison-reforms>.

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