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CLEMENCY AND PARDONS SYMPOSIUM

STATEMENT BY TONEY ANAYA* ON CAPITAL PUNISHMENT

I oppose capital punishment and was thrust into a position of having to put that opposition to the ultimate test — in 1986 I commuted the death sentences of all those on “death row” in the New Mexico State Penitentiary.

I have consistently opposed capital punishment as being inhumane, immoral, anti-God, and incompatible with an enlightened society.

But, beyond the consideration of morality and fairness, capital punishment is a false god that is worshiped by too many — politicians and voters alike. Because of the clamor for capital punishment, society ironically shackles itself and not criminals by giving us a false sense of security, a false sense of accomplishment, a hollow, empty, costly, temporarily-satisfying, vengeful outburst of emotions, yet accomplishing nothing in terms of establishing an effective crime prevention, crime-fighting strategy.

As a former prosecutor (an Assistant District Attorney for two years and New Mexico Attorney General for four years), I have opposed capital punishment for being applied in an arbitrary and disproportionate manner; for not being swift, nor certain to deter other crimes; for being too “final” in the event of innocent people being convicted of capital offenses (four men sentenced to death in New Mexico were later found to be innocent on appeal and released from prison); and, for being far too costly financially to soci-

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ety, vying for limited resources that were needed in other areas to effectively prevent and fight crime.

As New Mexico's elected Attorney General, I was tough on crime and tough on criminals — including government corruption and white collar crime. I was called upon as Attorney General to perform an extensive investigation into the mismanagement of our state penal institutions and the manipulation of our parole system and inmates by public servants. We made many recommendations that found their way into law, including an independent pardon and parole board that was not under the manipulative arm of the correctional system, and recommended penal reforms that had they been more closely followed in attitude and practice, might have prevented the prison uprising years later after I had left this office that left dozens of inmates dead, a penal system in ashes, and a pall of death over New Mexico. The message was simple: we were not realistically dealing with crime or criminals in our society, and, yet, politicians and the public were once again clamoring for the death penalty as the solution for all our shortcomings as a society.

My views on capital punishment were well known during my campaign for Governor of the State of New Mexico in 1982. The issue of capital punishment, "the death penalty," was raised in different contexts and at various times during the campaign. I was one of eight candidates seeking the nomination for Governor (four Democrats and four Republicans). Of the eight candidates, I was the only one opposed to capital punishment.

While there were various occasions at which the issue was debated, I vividly remember one "candidates forum" sponsored by religious leaders in New Mexico and held for all gubernatorial candidates in the primaries. It was held in a church in Albuquerque. All eight candidates were seated on a stage facing the audience, where they had the opportunity to state their positions on various issues, and take questions. One question posed, as expected, was on crime and capital punishment. I was the last of the eight to have to respond to the question. Each of the seven other candidates that preceded me in their responses seemed intent, as they respectively answered the question, to outdo each other in terms of who would be the toughest on criminals and in imposing the death penalty.

This one “debate” on crime and capital punishment left an indelible impression on me for two reasons. One, politicians were once again using symbolism — “kill the killers” — as the principal, if not the only, means of addressing the terrible crime problems facing society. There were no substantive proposals put forth by the candidates to seek to prevent crime by attacking the underlying causes of crime, nor to develop meaningful solutions to dealing with crimes committed or the criminals that commit the crimes. To do so would have required thought, a plan, a strategy and a willingness to explain it to a public hungry — but impatient — for effective crime fighting responses. It was, and remains, much simpler to wave the specter of death as the way of attacking all crime. This continued reaction by politicians was disconcerting in and of itself. I have long become accustomed — although not accepting — of political demagoguery.

What I found particularly discomfoting, however, was the reaction by the “religious” in the audience — leaders from all religions represented in New Mexico who had helped plan the event — as well as those Christians, Jews, and other believers — who filled the pews of the church for the debate. As each of the other seven candidates for Governor soundly proclaimed their support for capital punishment, they were roundly applauded. Then, as the last of the eight candidates to speak, I addressed the need for a comprehensive crime prevention/crime fighting plan and argued against capital punishment. There were gasps, boos, and hisses from the audience that nearly rocked the church building.

I was to see this lack of moral leadership by religious leaders and religious followers several times again as I faced this issue as Governor. However, the fact that this event took place in a church building and was sponsored by religious leaders and attended by presumed church followers, left a distinct impression upon me that I remember to this day.

I won the primary and general elections and was elected Governor. I attribute my victory in part to the comprehensive position papers I issued stating how, if elected, I would deal with the issues facing New Mexicans. Ultimately, despite emotions of the day, that is what voters will make their decisions on if only given the opportunity by candidates that propose solutions and not simply rely on rhetoric and hypocrisy. Support for capital punishment was obviously not the deciding factor in the voters’ minds as they went to the polls on election day.

During my term as Governor (1983-1987), I had to face capital punishment-related issues on a number of occasions. There were a number of inmates on "death row" in New Mexico's state penitentiary. Their attorneys, knowing of my opposition to capital punishment, refused to pursue any further appeals at the time. Their strategy seemed to be to delay having to utilize any subsequent appeals available to their clients until they absolutely were forced by circumstances to do so. They, frankly, were testing my will to see if I would permit any inmates to be executed. Had I proceeded toward an execution, they probably would have waited until moments before the scheduled execution before filing an appeal effectively stopping any such planned execution.

When those appeals were not pursued on behalf of "death row" inmates, I had to either proceed to execution or take other action. I "stayed" the planned executions of two inmates whose attorneys had not pursued available appeal rights. My executive order on the stays delayed their execution until midnight on December 31, 1986, my last moment in office.

As a result of these "stays," there was considerable public debate on the issue of capital punishment resulting in political demagoguery taking over again. Constitutional amendments and other legislation were introduced in the New Mexico State Legislature seeking to limit the Governor's responsibilities in death penalty cases. None were ever adopted and the Governor's powers and our constitutional form of government remain intact.

Under New Mexico's Constitution, Governors could not succeed themselves at the time (that has subsequently been changed). Thus, I could not run for re-election in the 1986 elections.

The 1986 elections in New Mexico found capital punishment to be a hotly-debated issue, not only in the Governor's race, but also in the contest for Attorney General, some legislative seats, and various other posts. It seemed at times that the candidates for Governor felt that imposing the death penalty was the solution not only to rising crime but also to all the other ills of society, including education, housing, health care, and jobs. Little of substance was being said on any issue other than capital punishment — a real disservice to the voters. The Democratic and Republican nominees for Governor spent most of the summer of 1986 trying to outdo each other on the issue of capital punishment. This preoccupation with capital punishment to the virtual ignoring of other issues had

gotten so bad by the fall of 1986 that I considered in my own mind immediately commuting the death penalties of all inmates then on "death row" and openly challenging the gubernatorial candidates to now turn their attention to the real issues facing New Mexicans such as education, jobs, and a meaningful crime-fighting proposal. I decided against such a step knowing that every candidate for every office at every level would have been thrown into the debate on an emotion-charged issue, defeating my purpose of trying to force the debate on substantive issues. Also, I knew that good candidates would have probably been defeated just on the basis of what stand they took on this issue, including many of the talented judges I had appointed to office and who now had to run for election (and who to this day are providing valuable service to New Mexicans), and legislative candidates who I knew were supportive of my position on the issue.

After the election of a new Governor in November 1986, I kept looking for some ray of hope that the newly-elected Governor would change his harsh position on capital punishment. Instead, he publicly stated that he could not wait to assume office on January 1, 1987, when the very first act he would take immediately upon assuming office would be to "sign an execution warrant" (showing his lack of knowledge for how the criminal justice system works and the process involved in executions) and put those inmates to death on his first day in office. In a subsequent private meeting early in November 1986 between the newly-elected Governor and myself, he reminded me that he had campaigned on the issue of capital punishment, that "those inmates" (on "death row") were "his," and that I had better leave them there for him and not commute their sentences. While I did not share my thoughts — neither publicly or privately — until later that month, I knew right then that I had no choice but to commute the death sentences before leaving office. The only decisions that had to be made had more to do with process and timing than with whether or not to do it.

With the invaluable legal assistance of the State Public Defender's Office, I proceeded to prepare for the subsequent commutations while revealing nothing to the Public Defender other than that I wanted to have this as an option. One reason for keeping my own counsel and preparing my own subsequent statement on the issue was due to the raging public debate that thousands of New Mexicans by now had become consumed in, resulting in threats of

physical harm and even death being made presumably to insure that I could not or would not take action commuting the sentences.

The day before the commutations, I announced that I would have a press conference on the issue for the following day but did not divulge my decision. On the morning of my press conference, I shared my decision with two trusted aides and had them deliver the closely guarded statement I had prepared explaining my actions to the state printing office for immediate printing for public release. I prayed again privately for guidance and strength, and then went to the Secretary of State's office and quietly signed the commutation orders commuting the death sentences of all five inmates then on death row in New Mexico's State Penitentiary. I then walked immediately to my press conference to announce my decision and action taken. I specifically chose the day before Thanksgiving, 1986, for my action in the hope that New Mexicans would utilize this time of reflection and thanksgiving to reflect ". . . on the gifts from God that we, as Americans, have been blessed with, as we prepare[d] for the celebration of Christmas, the day when so many of us celebrate the birth of the one upon whose life many of our religious beliefs are based" and in the hope that we would all reflect upon the meaning of life — and death.

The public reaction was as expected; an outpouring of outrage by supporters of capital punishment, which I realized would be forthcoming regardless of my explanations. I was prepared for that. What I was not prepared for, however, was the outpouring of support locally, nationally, and even internationally, and the virtual silence of those religious leaders of all religions who during my four-year term in office had come to me in private, individually and collectively, to urge me to continue to oppose capital punishment, to commute the sentences, and to pray with and for me. While supporters of death pummeled me, religious leaders remained ominously quiet. I am convinced that the United States will remain the only enlightened society in the world that still kills its killers so long as the decision to do so is entrusted to its politicians. Only when the religions of this country — all of whom have opposed capital punishment by various degrees — unite to change their followers' attitudes toward capital punishment by preaching from the pulpit, will the United States truly demonstrate that we are an enlightened country, a free country, a compassionate country, a country founded on the religious principles, a country that believes in the unique worth and dignity of each person, a country

committed to breaking the psychological, social, and economic patterns of racism, a country capable of solving any problem we make the commitment to confront, including breaking the vicious cycle of violence, of crime.

I am struck by the fact that it is easy for the general public to join in the chorus of "kill the killers" and to press their political leaders to jump in front of the pack — *until* those individuals themselves have to make these decisions of life or death. In New Mexico, despite prosecutors having sought the death penalty hundreds of times, jury after jury of private citizens have brought back the death sentence in only six cases in almost 20 years. There is today only one inmate on "death row" pursuing his appeal rights. This despite some of the most heinous and high-publicity murder cases in the nation, including a recent one where an individual was convicted of murdering seven people in Northern New Mexico (including a baby and family members, a State Police Officer, and a Deputy Sheriff's Officer). The point being, that private citizens, once being given the awesome responsibility of passing judgement, will invariably choose life over death.

While mine, too, was an awesome responsibility and one I did not take lightly, I could not have had the courage nor moral fortitude to do as I did were it not for the prayers of thousands, and the public and private support of organizations such as the New Mexico Committee to Stop Executions, the Western Regional Office of the National Coalition Against the Death Penalty, and the National Coalition Against the Death Penalty. May they always have the strength required to continue in their struggle until our religious and political leaders provide real leadership.

