

October 7, 2004

## ***Statement of the Association of the Bar of the City of New York Regarding New York's Death Penalty***

The Association of the Bar of the City of New York, which was established in 1870, is a professional association of more than 22,000 attorneys that continues to work to maintain high ethical standards for members of the legal profession and to promote integrity in the justice system. The Association has long been concerned with capital punishment and its application. This attention to the death penalty reflects the fact that the justice system can do nothing more consequential than to take a life. The Association has taken the lead in the analysis of practical and legal issues relating to the death penalty.<sup>1</sup>

On June 24, 2004, the New York Court of Appeals held that New York's death penalty statute violated the New York State Constitution.<sup>2</sup> The result of the decision is that the state is now considering whether to pass a new death penalty law.

New York adopted its death penalty statute in 1995. Despite any reasons that may have existed in 1995 for experimenting with a death penalty, in 2004 we know that the death penalty is a costly and unnecessary exercise. Before attempting to bring back the death penalty to New York, the Legislature should proceed cautiously, studying the practical consequences and costs of capital punishment.

One reason the Legislature should pause before rushing to reinstate the death penalty is that the punishment is unnecessary. Especially because New York in 2004 has the punishment of life imprisonment without the possibility of parole, a punishment it did not have before reinstating capital punishment in 1995, the punishment goals of deterrence, incapacitation and retribution are served without the death penalty.

Another reason not to rush to reinstate the death penalty is the risk of executing innocent people. Because of advancing scientific knowledge over the past decade, we now know that a number of convicted capital defendants around the nation were innocent.<sup>3</sup> Furthermore, because of systemic problems and the fact that not every case has DNA evidence, certainly we have not discovered all of the current innocent inmates, and the innocent will continue to be convicted of capital crimes. This risk exists in New York, which lacks several of the criminal justice reforms recommended by the Illinois Commission on Capital Punishment.<sup>4</sup>

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<sup>1</sup> See, e.g., Committee on Capital Punishment Symposium, *Rethinking the Death Penalty: Can We Define Who Deserves Death?*, 1 PACE L. REV. 107 (2003); Committee on Capital Punishment Panel Presentation, *Capital Punishment in the Age of Terrorism*, 41 CATH. LAW. REV. 187 (2003); Committee on Capital Punishment, *Dying Twice: Conditions On New York's Death Row*, 22 PACE L. REV. 347 (Spring 2002) (also at 56 RECORD ASSOC. BAR N.Y. 358); Committee on Capital Punishment, *The Pataki Administration's Proposals to Expand the Death Penalty*, 55 RECORD ASSOC. BAR N.Y. 129 (2000).

<sup>2</sup> *People v. LaValle*, 2004 N.Y. Slip Op. 05484, 2004 WL 1402516 (N.Y. June 24, 2004).

<sup>3</sup> In 2002, *Newsday* ran a four-part series, entitled "The Wronged Men," consisting of several articles about cases of wrongful convictions in New York during the 1990's. See, e.g., Sean Gardiner, *For Them, No Justice: Bad convictions put 13 men in prison*, NEWSDAY, Dec. 8, 2002, at A03; Sean Gardiner and Herbert Lowe, *Free to Struggle*, NEWSDAY, Dec. 9, 2002, at A06; Sean Gardiner, *Dynamics of Righting a Wrong: The DA's role in reversals*, NEWSDAY, Dec. 10, 2002, at A35; Herbert Lowe, *Friend Becomes Freedom Fighter*, NEWSDAY, Dec. 10, 2002, at A07; Sean Gardiner, *Getting it Right: Experts eye measures to prevent injustices*, NEWSDAY, Dec. 11, 2002, at A08; Graham Rayman, *Wrongfully Convicted: Two pursue cash awards*, NEWSDAY, Dec. 14, 2002, at A31. See also *Innocence and the Crisis in the American Death Penalty* (Death Penalty Information Center, Sept. 2004), available at <http://www.deathpenaltyinfo.org/article.php?scid=45&did=1150>.

<sup>4</sup> The Committee on Capital Punishment of the Association of the Bar of the City of New York is currently examining disparities between New York's criminal justice system and the recommendations of the *Report of Former Governor Ryan's Commission on Capital Punishment* (2002), available at <http://www.idoc.state.il.us/ccp/ccp/reports/>. Several of the recommendations, such as the use of videotaping for confessions, are not followed in New York.

Additionally, the legislature should consider what we now know about the financial costs of capital punishment. Studies consistently show that the death penalty costs states substantially more money than life in prison, and New York has spent at least \$170 million during the last nine years to achieve a handful of people on death row and no executions.<sup>5</sup> New York's experience in discovering that the death penalty is costly and yields no benefit is not unique. During the last decade we have learned that the money spent on the death penalty can be better spent on other needs in the state, especially when we now have the punishment of life imprisonment without parole.

These are only some of the problems with the death penalty, a punishment that is often applied in an arbitrary and unfair manner and creates complications throughout the criminal justice system. The question of whether to have a death penalty should be a contemplated criminal justice issue, not a rushed political issue.

Since 1995, as new problems with the death penalty have been discovered, commentators and politicians from both sides of the political spectrum have been critical of the death penalty. During the time since New York reinstated the death penalty, across the country and in New York, prosecutors, law enforcement personnel, judges, governors, crime victims, legislators, and former death penalty supporters have questioned the necessity of the death penalty.<sup>6</sup>

A rushed attempt at fixing the current death penalty statute would not cure the problems. Because the death penalty is unnecessary, arbitrary, and costly, we urge the Legislature to contemplate carefully what we have learned in the last decade before rushing to reinstate these risks and costs for New York.

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<sup>5</sup> Fred Lebrun, *The Danger of Rushing to Judgment*, TIMES UNION (Albany, NY), July 18, 2004, at D1.

<sup>6</sup> See *Another Place Beyond Here: The Death Penalty Moratorium Movement in the United States*, 73 U. COLO. L. REV. 1, 25-36, 53-59 (2002).