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THE LEAGUE OF WOMEN VOTERS *of New York State*

SPEAKER NOTES CAPITAL PUNISHMENT IN NEW YORK STATE

To speakers: Use the LWWNYS pamphlet, Death Penalty Study, as background information. To obtain a copy, contact the League of Women Voters of New York State at 518-465-4162 or email lwvny@lwvny.org. I'd suggest passing out the questions so the audience can follow along.

Capital punishment is currently in a state of flux nationwide, according to the Death Penalty Information Center. Thirty-six states have the death penalty as an option. Several states are considering legislation to repeal capital punishment or impose a moratorium on executions. New Jersey abolished the death penalty in December of 2007. In a few states the status is unclear since the Supreme Court voted to continue to allow lethal injection as the method of execution.

So where does New York fit in this picture?

Before I begin, I want to tell you that the state League of Women Voters did a two-year study of the capital punishment law, and after many local meetings with speakers and discussion, agreed in January of 2005 to oppose capital punishment in New York State. I will attempt to give you a broad background in answering the most commonly asked questions regarding capital punishment in New York, presenting arguments on both sides of the issue. When I'm finished I'll be glad to take questions that you still have.

The first question is:

Does New York have a valid death penalty law?

No because the Court of Appeals, New York's highest court, nullified the law in June of 2004 when it ruled that one aspect of the law was unconstitutional.

What was the court's objection to the law?

The Court of Appeals said that there was an element of coercion in the law, with the jury knowing that, if they could not agree on the death sentence or life without parole, the judge would be obligated to impose a sentence of between 20 and 25 years to life, with the possibility of parole. This is called the "deadlock" provision.

How long had this law been in effect?

Prior to 1963, 1,353 persons had been legally executed in New York. No one in New York has been executed since 1963. The Supreme Court ruled death penalty laws unconstitutional in 1972, then

reversed itself in 1976. In 1995, the state legislature passed a capital punishment statute after twenty years of not having the death penalty as a sentencing option. When the legislature passed this bill in previous years, Governors Carey and Cuomo vetoed it. Governor Pataki was in favor of the legislation. Since 1995, seven men have been given the death penalty. After the 2004 ruling all seven eventually were resentenced. The law that is now deemed unconstitutional would have to be revised, or a new law passed to bring back the state's death penalty. This eventuality is not anticipated with the current makeup of the state legislature.

Who was eligible for the death penalty under New York the law?

Anyone who was charged with first degree murder; that is, someone who intentionally caused the death of another person. In addition, at least one of a dozen other factors must have been present, including: the intended victim was a police officer, an employee of a correctional facility on duty, or a judge; the killing was to silence or exact retribution from a witness or family member of a witness; it was a hired killing; the defendant had killed before; the killing occurred as an act of terrorism; or the defendant acted in an especially cruel and wanton manner.

Why are opponents of the law against it?

The five main issues they raise are:

1) Possible innocence of the defendant with unreliable evidence.

Since 1976 when the possibility of the death penalty was reinstated by the U. S. Supreme Court, over 120 death row inmates have been exonerated. Twenty-three New Yorkers have been exonerated of felonies, having served a combined total of 260 years in prison. In January of 2007 a man from Auburn, New York, who had been convicted of murder, was released from prison after serving 15 years, when DNA evidence proved him innocent. According to the Innocence Project, this man was the eighth New Yorker exonerated by DNA testing since the beginning of 2006. With the use of DNA as evidence, convictions have been reversed. However, DNA evidence is not available in most cases.

Researchers have shown that eyewitness testimony can be unreliable, but is often the key element in conviction. In 1999, the Innocence Project reconstructed sixty-two exonerations in the United States to determine what factors had been prevalent in the wrongful convictions. Mistaken eyewitnesses were a factor in 84 percent of the convictions, snitches or informants in 21 percent, false confession in 24 percent...One third involved tainted or fraudulent science. (Scheck, B., P. Neufeld, and J. Dwyer. Actual Innocence. Doubleday 2000.)

2) The cost of the death penalty versus life in prison.

Current estimates are that this law has cost state taxpayers \$175 million since it was established in 1995. The Capital Defender Office, a defense system set up as part of the law to ensure that defendants who cannot afford adequate representation in capital cases receive effective legal counsel, had an annual budget of \$13 million when it was fully operational. Governor Paterson has since disbanded this office. Beyond this cost, the state Division of Criminal Justice Services reimbursed counties that prosecuted capital cases; training was provided to lawyers who assisted in capital cases; and lengthy briefs for cases could cost over one million dollars. Each of the Court of Appeals' seven judges had an additional clerk for capital cases; and expert fees of witnesses and attorneys on both sides of a case were additional expenses.

A July 12, 1999 Newsday article stated that Suffolk County and New York State paid \$2.5 million for the capital murder trial of Robert Shulman, one of the defendants on death row. This was estimated to be 3.5 times more expensive than if the death penalty had not been sought, and more than double what it would have cost to keep Shulman, 45, in prison for 40 years. The cost of housing an inmate annually is now estimated at \$34,000. Opponents argue the dollars spent to execute a defendant are taking funds and staff from the other cases that must be processed in the criminal justice system, and other needs such as crime prevention measures.

3) The unchecked power of county district attorneys to decide which defendants should be tried with a possible death sentence.

There are no fixed procedures in arriving at charging decisions, nor are decisions subject to fixed standards or to review once made. This lack of oversight results in a gross imbalance of cases throughout the state. With the exception of Suffolk County, which accounted for three of the seven defendants on death row, upstate prosecutors were much more likely to seek the death penalty than those from downstate. Since 1995, only 18% of the state's murders occurred outside of New York City and surrounding environs, but 60% of death-penalty notices were filed by upstate prosecutors.

4) Unfairness to minorities and economically disadvantaged people.

Statistics from the NYS Capital Defender Office reveal that, of 459 defendants indicted for first-degree murder statewide since 1995, 60% were Black, 19% were White and 21% were Hispanic. The large number of Black and Hispanic defendants at the beginning of criminal proceedings eventually leads proportionately to more minorities sentenced to death.

5) It is not a deterrent.

Opponents cite numerous studies that show there is no evidence that the death penalty prevents murders. Since 1976, the murder rate in the South has increased by 2.1% while the murder rate in the Northeast decreased by almost 5%. But according to the FBI's Crime Report for 2002, the South accounts for 82% of all executions, while the Northeast accounts for less than 1%.

5) The belief that New York State should not be in the business of executing its citizens.

Many opponents point to the fact that almost all developed countries have abolished the death penalty. They cite a New York Times poll from February 2005 stating that in October of 1994, 47% of New Yorkers supported the death penalty over life without parole, while in February of 2005 only 34% supported it. A 2006 nationwide Gallup Poll shows similar results. Overall support of the death penalty was 65% (down from 80% in 1994). When respondents were given the choice of life without parole as an alternate sentencing option, more chose life without parole (48%) than the death penalty (47%). (Death Penalty Information Center) Organizations such as Amnesty International and Human Rights Watch see the death penalty as a violation of our humanity.

How do proponents counter these arguments?

Proponents of the death penalty say that the cost of feeding and housing inmates for many years plus the cost of geriatric and medical care as they age will easily surpass the dollars currently expended on capital convictions and appeals.

Some proponents state that the assertion that the death penalty does not deter murderers flies in the face of common sense.

Countering the human rights aspect of state executions, they argue that people who murder deserve to die for their crimes, and the only way to prevent a murderer from killing again is to execute him or her.

Regarding reliability of evidence, the National District Attorney Association (NDAA) argues that, with the Super Due Process that the Supreme Court instituted in 1973, there is little chance of error. The NDAA also states that, the reason more blacks than whites receive the death penalty nationwide is that, according to the latest U.S. Bureau of Justice statistics, blacks commit 51% of all murders in the U.S. On the other hand, the American Bar Association adopted a resolution in 1997 that urges a nationwide moratorium on executions until concerns of fairness are addressed.

What is the current status of the capital punishment law in New York?

On August 10th, 2004, the Senate, in an agreement with the Governor, passed a revision to the law to fix the section the Court of Appeals objected to. The Assembly decided that, rather than do a 'quick fix' of the law, they would hold hearings to get public input on the law. They planned on two hearings, but ended up holding five in order to give everyone who requested it the opportunity to speak.

On April 5th, 2005, they issued a report based on the hearings. Of the 170 people who testified or submitted written testimony, 148 opposed the death penalty for various reasons, and 14 favored it. Speakers included professors who have studied the issue for many years, judges, district attorneys, religious leaders, civic leaders, and those most directly affected, people who had been incarcerated for years for a crime they didn't commit and later exonerated, and families of loved ones who were murdered.

A week later the Assembly Codes Committee voted to keep the companion to the Senate bill in committee, thus 'killing' the bill for the year. Members argued that many things had changed in the last 10 years. They gave as examples: the sentence of life without parole, which was not part of the law before 1995, changing public opinion with nationwide publicity on exonerations; and new DNA evidence available to exonerate people who have been convicted

But as Chairman Lentol of the Codes Committee said, this issue is not dead. And the New York death penalty law is still on the books. In fact, the senate has passed a new bill each year since then, but it has not come up for a vote in the assembly.

Any questions? What do you think?

Should the ultimate penalty of death be an option in the New York State criminal justice system?

People often say, "I'm against capital punishment, but still think it useful for the 'worst of the worst.'" The question is, How do we know who is the worst of the worst when we see unequal justice between counties, races, and economic disparities? It is common knowledge that those with money and high powered lawyers will do better in the criminal justice system. Outcomes also depend on the ability and zeal of prosecutors as well as publicity surrounding a trial.

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