

## Death Penalty, NYC Style

by {ga=ddean}

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When Governor George Pataki capitalized on widespread public fear of violent crime in his successful campaign against Mario Cuomo in 1994 by pledging to bring back the death penalty in New York, his tactic was far from unique. Many candidates for public office have used their opponents' opposition to capital punishment to [suggest that they are "soft on crime"](#) .

The use of the death penalty as a campaign issue resurfaced in the 2005 Democratic primary for Manhattan district attorney, but this time with a different twist.

Facing his first real election challenge in decades, District Attorney Robert Morgenthau attacked his opponent, former judge and prosecutor Leslie Crocker Snyder, for her support for capital punishment. In a television ad, Morgenthau's campaign highlighted a passage from Snyder's autobiography where she said that she would have been willing to give one defendant a lethal injection herself. The ad declared that Snyder was "wrong on the death penalty, wrong for Manhattan."

It is a testament both to Morgenthau's position as a long-time, well-respected incumbent and to the liberalism of Manhattan voters that such a tactic could be successful. But if we are to believe Snyder's protestations, her support for the death penalty was less than unequivocal. During the campaign she repeatedly said that she would seek the death penalty only for the most heinous crimes, and only then where there is strong corroborating evidence such as DNA.

The prominence of the death penalty debate in the Manhattan district attorney race is even stranger because New York state does not currently have a functioning death penalty, although the law allowing prosecutors to seek death sentences is still on the books.

### **No Real Death Penalty In New York**

In 2004 the Court of Appeals, New York's highest court, declared the state's death penalty statute unconstitutional in the case of [People v. LaValle](#) .(in pdf format). The law required the jury in a capital case to choose either a sentence of death or of life without the possibility of parole. Either choice had to be unanimous. The law also required the judge to instruct the jury that if it could not agree on either choice, the judge would sentence the defendant to life with parole eligibility after twenty to twenty-five years. This "deadlock instruction," said the court, violates the state constitution. Citing studies showing that a crucial consideration for juries in a capital case is whether the defendant will eventually be released from prison, the court

concluded that the instruction created "the unacceptable risk that it may result in a coercive, and thus arbitrary and unreliable, sentence."

The court left it to the legislature to enact a new "deadlock instruction." The State Senate passed a new version of the law in March, 2005. After holding [extensive hearings](#) (in pdf format) , however, the State Assembly failed to vote the new law out of committee. While some supporters of capital punishment suggest that the legislature is likely to revisit the issue in 2006, an election year, for now New York's capital punishment law is itself effectively dead.

It is still possible, of course, for the legislature to reinstate the death penalty in 2006. However, it is unlikely that there will be a massive groundswell of the kind that propelled Governor Pataki to victory more than ten years ago. Though a majority of voters in New York State continue to support the death penalty in principle, when given a choice between the death penalty and life without parole, those same voters [prefer life without parole by a margin of 53 - 38 percent](#) . In New York City, the City Council passed a resolution in 2002 [calling for a moratorium on executions](#) in the state.

### Why The Decline In Support For The Death Penalty

The decline in support for the death penalty can be attributed in part to the increasing number of death row prisoners across the country that have been exonerated and released, as well as misgivings about racial and class disparities in the application of the death penalty. But another reason for the decline in support is surely the precipitous drop in violent crime that occurred throughout the 1990s and continues today. The number of murders in New York City peaked in 1990, when [2,245 murders were reported](#) . The decline in the years since has been dramatic. In 2004, just [572 murders were committed](#) citywide, a drop 75 percent from 1990, and a drop of 63 percent from 1994, the year Governor Pataki rode a wave of fear into the governor's office. Thus far in 2005, the incidence of murder in New York City has declined an additional six percent. Occasionally, an individual crime still results in calls for the death penalty, such as the case of Ronell Wilson, who is accused of killing two undercover NYPD detectives in Staten Island in 2003 and is currently facing trial in federal court, where the death penalty is still available. But violent crime is no longer at the forefront of voters' minds.

Moreover, in the ten years between the revival of the death penalty and the LaValle decision, prosecutors rarely sought death sentences. In that period there were 864 cases statewide where the death penalty was available, and [only 19 times did prosecutors go to trial seeking the death penalty](#) . Only seven of those trials

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resulted in death sentences, and just two men remain on death row. None have been executed, and the possibility of an execution in the near future is slim.

The decision to seek the death penalty has been even rarer in New York City. [Only two of the seven death sentences](#) handed down since the reinstatement of capital punishment in 1995 came out of the five boroughs. Darrell Harris was convicted of killing three people in a Brooklyn social club in 1996. John Taylor was convicted for his part in the infamous "Wendy's massacre" in Queens in 2000.

Bronx district attorney Robert Johnson has refused to seek the death penalty for any case. Morgenthau has been outspoken in his opposition to capital punishment, and went so far as to testify in front of the state Assembly in December, 2004 that the legislature should not revive the state's death penalty law.

Whatever the cause, it seems clear that Morgenthau was able to tap into a strong sentiment among New Yorkers who believe it is possible, and even preferable, to control crime and keep the city safe without capital punishment.

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