



**MINUTES OF THE MEETING
OF THE LEGISLATIVE COMMISSION’S SUBCOMMITTEE TO STUDY THE
DEATH PENALTY AND RELATED DNA TESTING
(Assembly Concurrent Resolution No. 3, File No. 7, *Statutes of Nevada 2001 Special Session*)
October 29, 2001
Carson City, Nevada**

The first meeting of the Legislative Commission’s Subcommittee to Study the Death Penalty and Related DNA Testing (Assembly Concurrent Resolution No. 3, File No. 7, *Statutes of Nevada 2001 Special Session*) was held on October 29, 2001, commencing at 9:30 a.m. The meeting was held in Room 4100 of the Legislative Building, 401 South Carson Street, Carson City, Nevada and videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Page 2 contains the “Meeting Notice and Agenda.”

COMMITTEE MEMBERS PRESENT IN CARSON CITY:

Assemblywoman Sheila Leslie, Chairwoman
Senator Mike McGinness
Assemblyman Bernie Anderson
Assemblyman Dennis Nolan

COMMITTEE MEMBERS PRESENT IN LAS VEGAS:

Senator Joseph M. Neal Jr.
Assemblyman John Ocegura

COMMITTEE MEMBERS ABSENT:

Senator Mark A. James
Senator Maurice E. Washington

LEGISLATIVE COUNSEL BUREAU STAFF PRESENT:

Nicolas C. Anthony, Senior Research Analyst, Research Division
Risa B. Lang, Principal Deputy Legislative Counsel, Legal Division
Deborah Rengler, Senior Research Secretary, Research Division

MEETING NOTICE AND AGENDA

Name of Organization:	Legislative Commission’s Subcommittee to Study the Death Penalty and Related DNA Testing (A.C.R. 3 of the 17 th Special
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Session)

Date and Time of Meeting: Monday, October 29, 2001
9:30 a.m.

Place of Meeting: Legislative Building
Room 4100
401 South Carson Street
Carson City, Nevada

Note: Some members of the committee may be attending the meeting and other persons may observe the meeting and provide testimony, through a simultaneous videoconference conducted at the following location:

Grant Sawyer State Office Building
Room 4401
555 East Washington Avenue
Las Vegas, Nevada

If you cannot attend the meeting, you can listen to it live over the Internet. The address for the legislative Web site is <http://www.leg.state.nv.us>. For audio broadcasts, click on the link "Listen to Meetings Live on the Internet."

A G E N D A

- I. Opening Remarks
Assemblywoman Sheila Leslie, Chairwoman
- *II. Background Briefing and Overview of Study Issues
Nicolas C. Anthony, Senior Research Analyst, Legislative Counsel Bureau
- III. Public Testimony
- IV. Adjournment

*Denotes items on which the subcommittee may take action.

Note: We are pleased to make reasonable accommodations for members of the public who are disabled and wish to attend the meeting. If special arrangements for the meeting are necessary, please notify the Research Division of the Legislative Counsel Bureau, in writing, at the Legislative Building, 401 South Carson Street, Carson City, Nevada 89701-4747, or call Deborah Rengler at (775) 684-6825 as soon as possible.

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Notice of this meeting was posted in the following Carson City, Nevada, locations: Blasdel Building, 209 East Musser Street; Capitol Press Corps, Basement, Capitol Building; City Hall, 201 North Carson Street; Legislative Building, 401 South Carson Street; and Nevada State Library, 100 Stewart Street. Notice of this meeting was faxed for posting to the following Las Vegas, Nevada, locations: Clark County Office, 500 South Grand Central Parkway; and Grant Sawyer State Office Building, 555 East Washington Avenue. Notice of this meeting was posted on the Internet through the Nevada Legislature's Web site at www.leg.state.nv.us.

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OPENING REMARKS

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Chairwoman Leslie called the meeting to order at 9:30 a.m. and directed the subcommittee secretary to call roll. All members were present except Senators James and Washington. Chairwoman Leslie then introduced the subcommittee members and staff.

Chairwoman Leslie stated that the subcommittee's charge is to objectively evaluate how the death penalty is being applied in our state, especially in light of the new tool of DNA testing, and to make a substantive report of our findings and recommend legislation to the next Legislature. Assembly Concurrent Resolution No. 3 of the 17th Special Session (File No. 7, *Statutes of Nevada 2001 Special Session*) charges the subcommittee to study the following issues:

- \$ The actual number of executions compared with those sentenced to death;
- \$ The impact of race, national origin, gender and economic status in sentencing;
- \$ The sentencing of minors and the mentally retarded;
- \$ The adequacy of resources and counsel for defendants;
- \$ Appeals procedures;
- \$ The effectiveness of capital punishment as a deterrent;
- \$ The rules in a death penalty case;
- \$ The cost of prosecuting capital and non-capital cases; and
- \$ A number of critical issues surrounding DNA testing.

Ms. Leslie invited the subcommittee members to share their thoughts regarding the study.

Senator Neal indicated his position relative to the death penalty is well known.

Assemblyman Ocegüera noted that the study will generate significant discussion regarding capital punishment and he expects that his experience will add dimension to the debate of the issues.

Assemblyman Anderson reported that during the 2001 Session he and Senator Neal initiated discussion of Nevada's death penalty laws in order to provide an opportunity for open public debate. In his view, study and discussion of the death penalty will enable the subcommittee to determine whether this practice should continue in Nevada. Mr. Anderson stated that the study will raise public awareness of the issues surrounding capital punishment and expressed confidence that the subcommittee will be able to reach agreement on some of these important issues.

Assemblyman Nolan agreed that the death penalty is a topic that demands thorough study and he anticipates that his participation in the study will challenge his personal views on the subject.

Chairwoman Leslie introduced Nicolas C. Anthony, Senior Research Analyst, Research Division, Legislative Counsel Bureau, and asked him to brief the subcommittee on the issues to be covered during the course of the study and to review the subcommittee's timeline for discussing specific topics. She encouraged the subcommittee members and all interested parties to note any issues not included in the timeline.

BACKGROUND BRIEFING AND OVERVIEW OF STUDY ISSUES

Nicolas C. Anthony

Nicolas C. Anthony, Senior Research Analyst, Research Division, Legislative Counsel Bureau, Carson City, provided the subcommittee with a document titled "Overview and Timeline" (Exhibit A) and noted the tentative dates listed were subject to change. Mr. Anthony explained the "Overview and Timeline" summarizes the topics that will be discussed at the subcommittee's meetings:

- Meeting One – Introduction and Overview of Issues
- Meeting Two – Bias
- Meeting Three – Costs/Deterrence/Appeals Process
- Meeting Four – DNA Evidence
- Meeting Five – Age/Mentally Retarded
- Meeting Six – Work Session

Mr. Anthony then drew attention to the briefing binders titled, "Legislative Commission's Subcommittee to Study the Death Penalty and Related DNA Testing, Assembly Concurrent Resolution No. 3 of the 17th Special Session, Interim

2001-2002” (Exhibit B). The binders were compiled by staff and provided to each subcommittee member as a means of providing a general overview and supplemental background information. The binders are arranged by topic and follow the course of the study. Mr. Anthony noted this information may be augmented during the course of the study by testimony and future handouts. In addition, the Legislative Counsel Bureau has received other information from interested parties on specific topics and those materials may be added to the briefing binders at a later date. Mr. Anthony presented a brief overview of Nevada’s death penalty, covering the following points:

- § History of Death Penalty in Nevada—Since 1860, there have been 70 executions in Nevada by hanging, firing squad, lethal gas, and lethal injection.
- Appeals Process in Nevada—The trial and appeals process in Nevada, where a death sentence is sought, may be long and complex. There are numerous levels of appeal including the Nevada Supreme Court, the United State Supreme Court, Federal District Court, and the State Board of Pardons Commissioners. Mr. Anthony noted that further discussion of the appeals process would be discussed in detail at the subcommittee’s third meeting.
- § Inmates Executed Since 1977—The chart titled “Death Row Inmates Executed in Nevada Since 1977” (Exhibit C) lists details regarding the nine executions that have taken place since Nevada reinstated the death penalty in 1977.
- § Current Status of Death Row—Tab B of the briefing binders (Exhibit B) contains a monthly update from Nevada’s Office of the Attorney General. Currently, there are 86 inmates on death row in Nevada.

Senator Neal suggested the subcommittee examine: (1) the economic status of the inmates sentenced to death; and (2) the political ramifications of the death penalty in contests for public office such as governor, attorney general, state legislator, and district attorney. In his view, study of these issues is vital if the subcommittee is to appropriately address concerns regarding Nevada’s practice of capital punishment. Chairwoman Leslie pointed out that the economic status of death row inmates is tentatively scheduled for discussion at the subcommittee’s next meeting. She suggested that the subcommittee may also discuss potential political impacts relative to the death penalty at a future meeting.

Chairwoman Leslie requested that the subcommittee members review the materials in the briefing binders (Exhibit B) as each specific topic in addressed, rather than in a single sitting.

PUBLIC TESTIMONY

Nancy Hart

– Nancy Hart, a member of Amnesty International and Acting Chair of the Nevada Coalition Against the Death Penalty, Reno, read from a prepared statement (Exhibit D) advocating a moratorium on capital punishment pending a comprehensive study of the issues. Ms. Hart noted that while the ultimate goal of the Nevada Coalition Against the Death Penalty is to achieve abolition of capital punishment, during the interim the Nevada Coalition Against the Death Penalty will encourage changes to (2) prohibit the execution of juveniles and mentally retarded persons; and (2) eliminate Nevada’s use of three-judge panels in death penalty cases.

Reverend Bob Stoeckig

– The Reverend Bob Stoeckig, Vicar General and Chancellor of the Catholic Diocese of Las Vegas, Las Vegas, spoke in favor of abolishing the death penalty based on his religious convictions. Father Stoeckig reported that Pope John Paul II, the leader of the worldwide Roman Catholic Church, has asked all governments to stop using death as the ultimate penalty stating that it is cruel and unnecessary when alternate methods are available such as life imprisonment without the possibility of parole.

Rebecca Blaskey

– Rebecca Blaskey, a death penalty defense attorney and President, Nevada Attorneys for Criminal Justice, Las Vegas, read into the record a statement (Exhibit E) opposing the death penalty. Ms. Blaskey expressed confidence that the

study will reveal the flaws in Nevada’s capital punishment system and lead to legislative changes, particularly with regard to juveniles and mentally retarded offenders.

Reverend Ron Rentner

- The Reverend Ron Rentner, a Lutheran minister of Sparks, Nevada, appeared on behalf of the Religious Alliance in Nevada (RAIN). Appearing with Reverend Rentner, but not testifying, Reverend George Wolf, the Vicar General of the Roman Catholic Diocese of Reno. Reverend Renter reported that RAIN’s membership includes the Catholic Dioceses of Reno and Las Vegas, as well as Episcopalians, Lutherans, Methodists, and Presbyterians. He stated that RAIN and its affiliated members favor abolition of the death penalty. In support of his position, Reverend Rentner opined that justice is not attained if: (1) an innocent person is executed; (2) adolescents and the mentally impaired are executed; (3) the death penalty is imposed disproportionately on ethnic minorities and on volunteers seeking assisted suicide; (4) the best legal representation is available only to those with ample resources; and (5) people expect that execution repays evil or brings closure to victims.

Continuing, Reverend Rentner suggested that if after completing its study the subcommittee concludes that justice is not achieved through administration of Nevada’s capital punishment laws, it must then recommend changes to existing state death penalty laws.

Michael Pescetta

- Michael Pescetta, Chief, Capital Habeas Division, Office of the Federal Public Defender Office, Las Vegas, appeared as a private citizen and not in his capacity as a federal public defender. Mr. Pescetta spoke in opposition to the use of capital punishment, stating that his exposure to this practice in Nevada has convinced him that it fails to supply a rational basis for uniform imposition of the death penalty. Mr. Pescetta cited statistics regarding the economic and minority status of persons on death row, as well as counsel representation at trial and post-conviction proceedings. He reported that fewer than 10 percent of persons convicted of non-negligent homicide in Nevada are sentenced to death.

Mr. Pescetta asked the subcommittee members to review a recent American Bar Association report issued in June 2001 titled “Death Without Justice, A Guide for Examining the Administration of the Death Penalty in the United States.” The report identifies a number of areas that states should review to determine whether their death penalty systems are functioning appropriately.

Concluding his remarks, Mr. Pescetta urged the subcommittee review the current use of the three-judge panel system in capital cases. After conferring with staff, Chairwoman Leslie indicated that the subcommittee would discuss the three-judge panel system used in capital cases at its next meeting.

Chairwoman Leslie then asked Mr. Pescetta if all his concerns were included in the subcommittee’s meeting schedule (Exhibit A). Mr. Pescetta suggested that when the subcommittee studies the issue of bias that there should also be testimony on the adequacy of legal representation to minorities.

Responding to a question from Assemblyman Anderson, Mr. Pescetta indicated that approximately 50 attorneys practice capital offense law. Mr. Anderson questioned if the number of attorneys who represent defendants in capital cases would be part of the bias discussion with regard to jury instructions and adequate defense resources. Mr. Pescetta agreed that this issue should be included in discussions regarding the adequacies of defense services.

- Mr. Anderson asked Mr. Pescetta to share his thoughts on the possibility of requiring attorneys to pass a separate bar exam before they are allowed to practice in this area. Mr. Pescetta indicated that imposition of capital punishment qualification standards for attorneys is a function of the courts rather than the State Bar of Nevada. He explained that the appointment of counsel is governed either by statute or by Nevada Supreme Court Rule (S.C.R.) 250. The Nevada Supreme Court has imposed some qualification standards on defense counsel who try capital cases, but these qualifications are less rigorous than those proposed by the Fondi Commission that last studied S.C.R. 250. There are virtually no standards for counsel appointed in state post-conviction habeas proceedings. Those appointments are made at the discretion of the judge before whom the case is heard. Mr. Pescetta said there is no systematic method of evaluating the qualifications of counsel, either by the Nevada Supreme Court or the State Bar before appointments are made.

At issue for the American Bar Association is whether the responsibility for qualifying and identifying counsel for appointment in such cases should be removed from the judiciary before whom the case is heard and given to an independent public defender commission. The practice is used in other states. Mr. Pescetta suggested that the subcommittee may wish to discuss this issue in the course of its study.

Mr. Anderson indicated that it is his understanding that after working on a number of time-consuming capital punishment cases, many attorneys abandon this area of practice because of inadequate compensation. Mr. Pescetta explained that the compensation rate for appointed counsel rate is \$75 per hour. He pointed out that this amount does not pay office overhead for the typical Las Vegas firm, where an associate's billing rate is approximately \$150 per hour. Hence there is no incentive for attorneys to become proficient in capital defense. As a result, many court-appointed attorneys in capital cases are ill prepared to provide adequate representation to their clients and expend as little effort as possible.

Assemblyman Nolan suggested that the subcommittee utilize objective rather than anecdotal information to identify cost and skill differences between public defenders and court-appointed counsel. Mr. Pescetta reported that a systematic study of these issues has never been conducted. Mr. Pescetta asserted that his review of the current death row inmate cases revealed that none of Nevada's death row inmates had privately retained counsel at the trial. In his view, public defenders' offices are well funded, and their staffs provide excellent representation without the benefit of formal training programs on defending capital offenses. Rather, each individual attorney decides whether he or she desires to remain current on death penalty issues. For this reason, the knowledge of individual counsel within public defenders' offices varies significantly, and Mr. Pescetta suggested that this issue should be discussed at the same time the subcommittee addresses the adequacy of defense services.

Assemblyman. Nolan questioned whether the lack of minority judges in Clark County creates prejudice within the County's judiciary. Responding, Mr. Pescetta indicated overt prejudice is rare in the judiciary. As a practical matter, juries should reflect the racial composition of their communities and, if possible, should include a fair representation of the defendant's race. He noted that there are a disproportionate number of minorities on death row, particularly African Americans, who have been sentenced to death by all-white juries. Whether overt prejudice existed within those juries is unknown.

Continuing, Mr. Pescetta stated that the three-judge panel process in capital cases is flawed in that some counties lack minority judges to serve on the panels. He indicated that to his knowledge, the Nevada Supreme Court is free of racial bias; however, because a racial minority has never served on the court, a perception of bias may exist, particularly with the number of minorities who have been sentenced to death.

Chairwoman Leslie reported that she has asked subcommittee staff to research how other states approached public defender commissions, costs, and services. This information will be presented at the subcommittee's second meeting.

Senator Neal pointed out that because of the separation of powers, it is possible that neither the subcommittee nor the Legislature can modify S.C.R. 250. He suggested that the Legislature may be able to urge changes to S.C.R. 250 through the budgetary process. Senator Neal also questioned the importance of S.C.R. 250 to processing death penalty cases.

Mr. Pescetta explained that S.C.R. 250 provides the structure within which death penalty cases are processed. A portion of S.C.R. 250 sets forth the minimum qualifications required before an attorney may represent a defendant in a capital case and other aspects related to procedure. In Mr. Pescetta's view, responsibility for prescribing rules should rest with both the Legislature and the Nevada Supreme Court, and as such, it would be appropriate for the subcommittee or the Legislature to determine more stringent counsel qualifications and enhanced protective procedures should be adopted. The Legislature has provided statutory procedures for imposition and review of the death penalty and the compensation rate for counsel.

Senator McGinness referenced Mr. Pescetta's testimony that the death penalty has been sought in only 10 percent of all potential capital cases. He invited Mr. Pescetta to further expand on this statement. Mr. Pescetta clarified that there are approximately 1,000 inmates convicted of non-negligent homicide and non-negligent manslaughter in the Nevada prison system and only 86 of these offenders were sentenced to die. He noted that the number of cases where a notice of intent to seek the death penalty was filed is significantly larger than the total number of inmates

incarcerated for murder and non-negligent manslaughter; however, most of those cases are resolved through plea negotiations.

Reverend B. Massey Gentry

The Reverend B. Massey Gentry, Rector, Christ Episcopal Church, Las Vegas, read into the record a statement (Exhibit F) regarding his opposition to the death penalty. Father Massey stated that he is of the opinion that the death penalty is unfairly applied to persons who are economically disadvantaged, racial minorities and under educated.

JoNell Thomas

JoNell Thomas, a private attorney, Las Vegas, stated that she is a member of the Board of Directors of the Nevada American Civil Liberties Union (ACLU) and a Nevada representative on the ACLU's national board. Ms. Thomas spoke in favor of abolishing the death penalty, sharing her views as follows:

- The death penalty constitutes a violation of the Fifth, Eighth, and Fourteenth Amendments of the United States Constitution.
- Administration of capital punishment is barbaric, costly, and irreversible.
- The death penalty is not fairly administered, especially with respect to the economically disadvantaged and racial minorities. These offenders typically receive inadequate representation.
- The list of aggravating circumstances contained in Nevada's capital punishment statutes needs to be reviewed.

Concluding her remarks, Ms. Thomas requested the subcommittee include in its study a review of the Legislature's past actions with respect to the death penalty. Further, she urged the subcommittee to narrow the death penalty eligibility criteria for persons convicted of first-degree murder.

Chairwoman Leslie thanked Ms. Thomas for her testimony and indicated that the subcommittee would try to set aside time to address these issues.

Reverend Dr. Phil Hausknect

The Reverend Dr. Phil Hausknect, a retired ordained minister of the Evangelical Lutheran Church in America (ELCA), Las Vegas, appeared on behalf of the Lutheran Advocacy Ministry in Nevada. Reverend Hausknect stated that the ELCA opposes the practice of capital punishment. In the view of the ELCA, the death penalty defiles the sanctity and dignity of life.

Continuing, Reverend Hausknect reported that the ELCA holds a national assembly biennially, with elected delegates from local ministries throughout the country attending. The national assembly conducted a study of the death penalty in the 1980s, and in 1991, the national delegates voted to oppose the death penalty. Some of the conclusions reached by the ELCA are as follows:

1. The death penalty cannot be administered justly.
2. Government does not have the unlimited right to take life; rather, it has the obligation to ensure a peaceful and orderly society.
3. Alternatives to capital punishment—for example a prison sentence of life without the possibility of parole—are available for those who commit capital offenses.
4. The ongoing controversy surrounding the death penalty demonstrates that a moratorium should be imposed on capital punishment pending a review of this practice.

5. It is not possible to fairly apply the death penalty. The face of the victim as well as the offender's affluence, age, gender, mental capacity, and race create biases.
6. The violence of the death penalty perpetuates violence in society.

Reverend Hausknecht provided the subcommittee with a booklet titled, "The Death Penalty: The Religious Community Calls for Abolition" (Exhibit G) in which 32 religious organizations express their opposition of the death penalty.

Responding to a question from Senator Neal and in closing, Reverend Hausknecht shared his personal views. The state exists for the sake of order and peace for all citizens. There are different forms of state such as democracies and dictatorships. The state must assume power for the sake of order; however, the church champions the freedom of individuals and complies with the state's actions only when they are just and benefit all people. From the Christian perspective, the state does not have the right to deny life to a human being when that life needs to be lived out with the opportunity to repent and experience forgiveness. The church may not force its will on the state; likewise, the state should not be able to force its will on the church.

Howard Brooks

Howard Brooks, Deputy Public Defender, Clark County Public Defenders Office, Las Vegas, spoke in opposition to the practice of capital punishment. Mr. Brooks reported he had litigated a total of 60 murder cases over a six-year period. In support of his position, Mr. Brooks expressed his views as follows:

- Nevada law provides 14 separate aggravating circumstances under which a murder may be prosecuted as a capital offense. Under this statutory scheme, every murder is an aggravated killing and a potential case for seeking the death penalty.
- The prosecutor has sole authority to decide whether to seek the death penalty. In many instances, this decision is based on whether the prosecutor is confident that he or she will be able to attain a death sentence for the defendant.
- Many attorneys are not interested in practicing capital punishment law because of the conduct of prosecutors in these types of cases and the deferential treatment they receive from judges. The Nevada Supreme Court refuses to address this issue.

Concluding his remarks, Mr. Brooks urged the subcommittee to review Nevada's death penalty statutes. He also invited the subcommittee members to attend a murder trial with him so they may gain first-hand knowledge of the process.

Dr. Brian Lahren

Dr. Brian Lahren, Behavioral Psychologist, Executive Director, Washoe Association for Retarded Citizens, Reno, Nevada, spoke in opposition to the death penalty in general and its application to mentally retarded persons. In support of his position, Dr. Lahren offered the following remarks:

- Based on his research, there is no scientific evidence that the death penalty deters capital crime. The rate of capital crime is higher in those states that utilize the death penalty.
- It costs at least as much to incarcerate a person for life as to proceed with an execution of an individual.
- Only Kurdistan, the United States, and possibly Japan allow persons with mental retardation to be executed as matter of state policy.
- In the United States only 23 states allow execution of those with mental retardation. Also, 15 states that otherwise execute people, exempt persons with mental retardation.

- English common law, the source of our fundamental concepts of justice, takes as a core principle the notion of intentional action. The mentally retarded, who are compromised in their ability to form a clear conscious intention, are not treated fairly in a system where justice is based on intentional. They are compromised in their ability to know what is going on and to form clear intentions, and they react without the benefit of some of the socialization controls that are expected of other people.

Dr. Lahren said he would expand on these background issues in April 2002 when the topics are discussed in detail.

Reverend Dr. Jane Foraker-Thompson

The Reverend Dr. Jane Foraker-Thompson, Episcopal Diocese of Nevada, Las Vegas, submitted the written position (Exhibit H) of the Episcopal Church, not only in Nevada but in the United States of America, its territories and possessions, in opposition to the death penalty and in support of DNA testing to verify the guilt or innocence of a person.

Senator Neal asked Dr. Foraker-Thompson if she expected DNA testing to be used as a tool to determine innocence prior to trial or after a person is convicted. Dr. Foraker-Thompson indicated that the death penalty and DNA testing are separate issues, and in her view, DNA testing should always be conducted prior to trial to ensure the right suspect is being charged and tried. At the request of Senator Neal she clarified her position, stating that since Nevada uses a system of capital punishment, it should use the best evidentiary tool available—DNA testing—to ensure that innocent people are not executed or imprisoned.

Maizie W. Pusich

Maizie W. Pusich, Chief Deputy, Washoe County Public Defender's Office, Reno, read into the record a prepared statement (Exhibit I). Ms. Pusich indicated that she supervises the defense of homicide and sexual assault cases in her office, and capital cases are the most time-consuming and expensive. In her view, it is the responsibility of the subcommittee to ensure that defendants are not subject to the death penalty due to their economic status, the inexperience of their counsel, a lack of sufficient resources, or their race.

Mike Stuhff

Mike Stuhff, private attorney, Las Vegas, spoke in opposition to the death penalty. Mr. Stuhff questioned whether there are people who deserve the death penalty and if the system is capable of determining who should be sentenced to death.

Continuing, Mr. Stuhff said there are three basic categories that prevent the system from functioning in a uniform manner:

1. Chance—the prosecutor, the defense counsel, the attitude of the victim's family, the victim, the evidence, and the members of the jury.
2. Bias—economics, mental disability, and race.
3. Errors of fact—availability or relevant DNA evidence, jurors, police officers, and prosecutors.

Mr. Stuhff asserted that the courts should review the qualifications of lawyers who handle death penalty cases. In his view, the State Bar as an organization is biased towards attorneys that practice civil law and the criminal defense bar has little input in the organization.

Raquel Aldana-Pindell

Raquel Aldana-Pindell, Law Professor, William S. Boyd School of Law, Las Vegas, appeared as a private citizen and read into the record a prepared statement (Exhibit J), regarding her opposition to capital punishment. Ms. Aldana-Pindell offered the following remarks in support of her position:

- In recent years, there has been a global trend toward the abolition of capital punishment. As the international community seeks to enforce principles of fundamental rights, endorsement of the death penalty contradicts the message regarding the sanctity of life. The United States has been criticized in the international community for its practice of capital punishment.
- Many international treaties have declared the death penalty a violation of human rights. Some countries refuse to extradite defendants to countries that still practice capital punishment.
- The United States is the only developed country that has not abolished the death penalty and is one of 28 countries that carry out executions.
- Since the September 11, 2001, terrorist attack, the United States has asked European nations to turn over suspected terrorist for prosecution. The European Union has issued a resolution that its 15 members will not extradite suspected terrorists to the United States if they are likely to face the death penalty in American courts.
- The United States cannot move toward compliance with its international obligations or toward consensus with its allies without the assistance of the individual states.

Concluding her remarks, Ms. Aldana-Pindell urged the subcommittee to consider the international impact of continued application of the death penalty on the United States' standing as a world leader.

Senator Neal commented that the abolition of the death penalty in the international community arose from a moral contradiction, rather than those issues that are being dealt with by the subcommittee.

Reverend Charles T. Durante

The Reverend Charles T. Durante, Co-chair, Life, Peace & Justice Commission, Roman Catholic Diocese of Reno, appeared as a private citizen, a member of the State Bar of Nevada, and a Roman Catholic priest. He submitted a prepared statement (Exhibit K) in opposition to the death penalty and shared his views as follows:

§ The dignity of every human being is innate and cannot be lost or taken away; and

§ Capital punishment lowers the state to taking the life of a human being and erodes the moral fiber of society and the value of human life.

§ The state should never take a life when it can avoid doing so.

Father Durante urged the subcommittee to objectively review the State's use of capital punishment from both a moral and legal perspective.

Reverend Frank Murphy

The Reverend Frank Murphy, Priest/Chaplin, University Catholic Community at the University of Nevada, Reno, and the Pastoral Center of the Roman Catholic Diocese of Reno, advocated abolishment of the death penalty. Father Murphy shared his views that the taking of a life is a relative rather than an absolute right; however, if the common good can be protected by other means, then those alternate methods must be considered. Further, he stated that the elements that constitute a "morally reprehensible" act include: (1) an awareness that the act is immoral and will produce an evil result; and (2) an individual's free and deliberate commission of an act.

Senator Neal asked Father Murphy to expand his remarks regarding the relative right of the state to practice capital punishment. Father Murphy explained that in his view, it is the absolute right of the state to preserve the integrity and well being of its citizens. However, the manner in which the state carries out this responsibility is, in his opinion, relative and may be changed or adapted in order to attain the desired goals.

Senator Neal expressed surprise at Father Murphy's statement that passion diminishes the will of an individual to act

deliberately and asked if he is suggesting that Nevada recognize crimes of passion, as does the French government. Father Murphy commented that currently law distinguishes between first-degree murder and manslaughter.

Ben Graham

Ben Graham, Chief Deputy District Attorney, Office of the Clark County District Attorney, Las Vegas, appearing on behalf of the Nevada District Attorney's Association, indicated that he does not share the views expressed by some witnesses and he urged the subcommittee consider all aspects of death penalty issues.

Referencing the "Overview and Timeline" (Exhibit A), Assemblyman Anderson asked if Mr. Graham was aware of additional topics that should be addressed during the study. Mr. Graham noted that the "Overview and Timeline" (Exhibit A) appears complete and thorough.

Senator Neal asked Mr. Graham to share his thoughts regarding the need to study death penalty issues. Mr. Graham encouraged a judicious and objective study of the issues.

Ron Dillehay

Ron Dillehay, Director of Grant Sawyer Center for Justice Studies, University of Nevada, Reno, and a social psychologist in the area of applications of social psychology to law and capital cases for the last 25 years, asked that the subcommittee include in its study consideration of: (1) whether jurors understand their role and the tasks they are required to perform in the penalty phase of capital cases; (2) selection of jurors in capital cases; (3) media coverage and pretrial publicity; and (4) fallibility of eyewitness identification. He noted that Illinois, Missouri, Nevada, and North Carolina have conducted research on whether jurors understand their role and the tasks they must perform in the penalty phase of capital cases.

Chairwoman Leslie reiterated that the subcommittee's first meeting was designed to stimulate discussion of death penalty issues. She indicated that the subcommittee will adhere to agenda topics at future meetings and that public testimony will be restricted solely to those issues. Repetitive testimony will be discouraged.

Senator Neal recalled that when asked whom he would like to participate in the subcommittee hearings, he had suggested Sister Helen Prejean of the Moratorium Campaign, which is based in New Orleans, Louisiana. He inquired if Sister Prejean had been contacted.

Chairwoman Leslie indicated that staff would try to contact Sister Prejean.

Chairwoman Leslie asked the subcommittee to discuss the possibility of appointing a technical advisory committee. All subcommittee members favored creating a technical committee to advise the subcommittee on death penalty issues.

The subcommittee members discussed tentative dates for the remaining meetings. The final dates agreed upon were:

- \$ Meeting Two—Thursday, January 24, 2002 — Las Vegas, Nevada
- \$ Meeting Three—Thursday, February 21, 2002 — Carson City, Nevada
- \$ Meeting Four—Monday, March 18, 2002 — Las Vegas, Nevada
- \$ Meeting Five—Thursday, April 18, 2002 — Las Vegas, Nevada
- \$ Meeting Six Work Session—Thursday, June 6, 2002 — Carson City, Nevada

ADJOURNMENT

There being no further business, the meeting was adjourned at 12:45 p.m.

Exhibit L is the “Attendance Record” for this meeting.

Respectfully submitted,

Deborah Rengler
Senior Research Secretary

Nicolas C. Anthony
Senior Research Analyst

APPROVED BY:

Assemblywoman Sheila Leslie, Chairwoman

Date _____

LIST OF EXHIBITS

Exhibit A is a document, titled “Overview and Timeline” provided by Nicolas C. Anthony, Senior Research Analyst, Legislative Counsel Bureau, Carson City, Nevada.

Exhibit B is a briefing binder titled “Legislative Commission’s Subcommittee to Study the Death Penalty and Related DNA Testing, Assembly Concurrent Resolution No. 3 of the 17th Special Session, Interim 2001-2002” containing background material and an overview of certain study issues provided by Nicolas C. Anthony, Senior Research Analyst, Legislative Counsel Bureau, Carson City, Nevada.

Exhibit C is a document titled “Death Row Inmates Executed in Nevada Since 1977” provided by Nicolas C. Anthony, Senior Research Analyst, Legislative Counsel Bureau, Carson City, Nevada.

Exhibit D is a copy of the statement read into the record by Nancy Hart, a member of Amnesty International and the Nevada Coalition Against the Death Penalty, Reno, Nevada, provided by Ms. Hart.

Exhibit E is a copy of the statement read into the record by Rebecca Blaskey, a death penalty defense attorney and President, Nevada Attorneys for Criminal Justice, Las Vegas, Nevada, provided by Ms. Blaskey.

Exhibit F is a copy of the statement read into the record by The Reverend B. Massey Gentry, Rector, Christ Episcopal Church, Las Vegas, Nevada, provided by Father Gentry.

Exhibit G is a booklet titled, “The Death Penalty: The Religious Community Calls for Abolition, A Statement of Opposition to Capital Punishment” provided by Rev. Dr. Phil Hausknecht, Lutheran Advocacy Ministry in Nevada, Las Vegas.

Exhibit H is a letter dated October 29, 2001, to the Subcommittee to Study the Death Penalty and Related DNA Testing from Rev. Dr. Jane Foraker-Thompson, Episcopal Diocese of Nevada, Gardnerville, Nevada, provided by Rev. Dr. Foraker-Thompson on behalf of Bishop Katharine Jefferts Schori.

Exhibit I is a copy of the statement dated October 29, 2001, read into the record by Maizie W. Pusich, Chief Deputy, Washoe County Public Defender’s Office, Reno, Nevada, provided by Ms. Pusich.

Exhibit J is a copy of the statement read into the record by Raquel Aldana-Pindell, Professor, William S. Boyd School of Law, Las Vegas, Nevada, provided by Ms. Aldana-Pindell.

Exhibit K is a copy of the statement read into the record by The Reverend Charles T. Durante, Co-chair, Life, Peace & Justice Commission, Roman Catholic Diocese of Reno, Nevada, provided by Reverend Duarte.

Exhibit L is the “Attendance Record” for this meeting.

Copies of the materials distributed in the meeting are on file in the Research Library of the Legislative Counsel Bureau, Carson City, Nevada. You may contact the Research Library at (775) 684-6827.