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*])
February 21, 2002
Carson City, Nevada

The third 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 February 21, 2002, commencing at 9:35 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. Pages 2 through 4 contain the "Meeting Notice and Agenda."

SUBCOMMITTEE MEMBERS PRESENT IN CARSON CITY:

Assemblywoman Sheila Leslie, Chairwoman
Senator Mark A. James
Senator Mike McGinness
Senator Maurice E. Washington
Assemblyman Bernie Anderson

SUBCOMMITTEE MEMBERS PRESENT IN LAS VEGAS:

Senator Joseph M. Neal Jr.
Assemblyman Dennis Nolan
Assemblyman John Oceguera

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 (Assembly Concurrent

Resolution No. 3 [File No. 7, *Statutes of Nevada 2001 Special Session*])

Date and Time of Meeting: Thursday, February 21, 2002
9:30 a.m.

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

Note: Some members of the subcommittee 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. Introduction and Opening Remarks

Assemblywoman Sheila Leslie, Chairwoman

*II. Approval of Minutes of the January 24, 2002, Meeting

*III. Presentation on the Appeals Process and Error Rates in Capital Cases

James S. Liebman, Simon F. Rifkind Professor of Law, Columbia University School of Law
Michael Pescetta, Assistant Federal Public Defender, Office of the Federal Public Defender, District of Nevada
Frankie Sue Del Papa, Attorney General, Office of the Attorney General
Ben Graham, Chief Deputy District Attorney, Office of the Clark County District Attorney
Representative, Office of the Washoe County District Attorney

*IV. Presentation on Judicial Functions and Three-Judge Panels in Nevada Capital Cases

The Honorable Robert E. Rose, Associate Justice, Nevada Supreme Court
The Honorable Michael R. Griffin, First Judicial District Court, Department 1
The Honorable Jerome M. Polaha, Second Judicial District Court, Department 3
Michael Pescetta, Assistant Federal Public Defender, Office of the Federal Public Defender, District of Nevada
Maizie W. Pusich, Chief Deputy Public Defender, Washoe County Public Defender's Office
Ben Graham, Chief Deputy District Attorney, Office of the Clark County District Attorney
Daniel J. Greco, Chief Deputy District Attorney, Office of the Washoe County District Attorney

*V. Presentation on Nevada's Rules Pertaining to Procedure and Argument During a

Capital Trial

Philip J. Kohn, Special Public Defender, Office of the Special Public Defender, Clark County
Michael Pescetta, Assistant Federal Public Defender, Office of the Federal Public Defender, District of Nevada
Ben Graham, Chief Deputy District Attorney, Office of the Clark County District Attorney
Daniel J. Greco, Chief Deputy District Attorney, Office of the Washoe County District Attorney

*VI. Presentation on the Death Penalty as a Deterrent and the Perspective of Victims

Matt Leone, Associate Professor of Criminal Justice, University of Nevada, Reno
Ben Graham, Chief Deputy District Attorney, Office of the Clark County District Attorney
Representative, Office of the Washoe County District Attorney
Victor-Hugo Schulze II, Deputy Attorney General, Office of the Attorney General
Ron Cornell, Families of Murder Victims
David Mouen, Families of Murder Victims
Sandi Viau, Families of Murder Victims
Kathy Smith, Mother of Murder Victim
Bud Welch, Murder Victims Families for Reconciliation

VII. Public Testimony

VIII. 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.

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.

INTRODUCTION AND OPENING REMARKS

Assemblywoman Leslie welcomed those present to the third meeting of the subcommittee. She made a brief comment on the "Law and Politics of the Death Penalty" Conference to be held on March 1 and 2, 2002, in Eugene, Oregon, encouraging subcommittee members and members of the audience to attend the conference.

APPROVAL OF MINUTES OF THE JANUARY 24, 2002, MEETING

The minutes of the January 24, 2002, meeting will be approved at the subcommittee's March 18, 2002, meeting.

PRESENTATION ON THE APPEALS PROCESS AND ERROR RATES IN CAPITAL CASES

James S. Liebman

James S. Liebman, Simon F. Rifkind Professor of Law, Columbia University School of Law, New York, New York, reported that he and his colleagues have been studying error rates in capital cases for 11 years, culminating in the release of two reports:

- *A Broken System: Error Rates in Capital Cases, 1973-1995*; and
- *A Broken System, Part II: Why There Is So Much Error in Capital Cases, and What Can Be Done About It*.

Excerpts of both reports are provided as part of Exhibit A. The reports are national in nature, compiling data from all 34 states that utilize the death penalty as punishment for capital cases. The most difficult part of the study was to locate information on every death verdict imposed in the United States (U.S.) during the study period. In 1973, states began to reimpose the death penalty with valid post-*Furman* [*Furman v. Georgia*, 408 U.S. 238 (1972)] death penalty statutes. The study reviewed cases that had received state direct appeal, the first level of review; reversals of capital cases in the state post-conviction phase; and federal habeas corpus cases.

Referring to the National Composite Capital Punishment Report Card (Appendix 1, Exhibit A) and the Nevada report card (Appendix 3, Exhibit A), Professor Liebman noted there were 5,826 death sentences imposed during the study period, of which 112 were in Nevada.

Senator James asked if the types of errors had been identified and the justification for reversal. He also expressed interest as to whether further analysis had been conducted when the cases were remanded for retrial. Professor Liebman said the reports show the frequency of errors and illustrate the seriousness of the problem. Sixty-eight percent of all death verdicts imposed and fully reviewed during the study period were reversed by courts due to serious errors such as:

- Incompetent defense lawyers;
- Police or prosecutor professional misconduct or suppression of exculpatory evidence;
- Misinformation or flawed instructions given to jurors; or
- Bias on the part of the judge or jurors.

Professor Liebman explained that in every case, it had to be proven that the error would have changed the outcome of the decision. Eighty-two percent of the cases remanded for retrial at the second appeal phase resulted in sentences less than death, including 9 percent with not guilty verdicts. Nineteen separate statistical analyses were conducted, which illustrated that ten conditions are consistently associated with high rates of error:

1. Heavy use of the death penalty creates a high risk that mistakes will occur.
2. The more often a state imposes death sentences in cases that are not highly aggravated, the higher the risk of serious error.
3. As the homicide risk to whites in a state equals or surpasses the threat to African Americans, the error rate increases.
4. The higher the proportion of African Americans in a state—and in one analysis, the more welfare recipients—the greater the rate of serious capital error. This appears to be an indicator of crime fears driven by economic and racial conditions.
5. States with low rates of apprehension, conviction, and imprisonment of serious criminals experience higher capital error rates. Officials who perform poorly at fighting crime also conduct inadequate capital investigations and trials.

6. The more often and directly that state trial judges are subject to popular election, and as the partisan nature of those elections increases, the higher the state's rate of serious capital error.

7. Heavy use of the death penalty causes delay, increased costs, and keeps the judicial system from performing its job. High numbers of death verdicts awaiting review paralyze appeals.

8. Poor quality trial proceedings increase the risk of serious reversible error. Poorly funded courts, high capital and noncapital caseloads, and unreliable procedures for finding facts all increase the chance of error.

9. Chronic capital errors have persisted over time. The report showed reversible errors in death verdicts increased 9 percent a year during the study period.

10. Federal and state appeals judges cannot be expected to find all serious trial errors in capital cases. Judges are susceptible to political pressure and make mistakes. Further, judges recognize that proceedings are marred by error but affirm decisions because of stringent rules limiting reversals.

Professor Liebman concluded his remarks by recommending implementation of the following ten reforms to limit the death penalty to those offenders who can be shown without a doubt to have committed an egregiously aggravated murder without extenuating factors:

1. Requiring proof beyond any doubt that the defendant committed the capital crime;

2. Stipulation that aggravating factors must substantially outweigh mitigating circumstances before a death sentence can be imposed;

3. Barring the death penalty for defendants with inherently extenuating conditions— juveniles, mentally retarded persons, and severely mentally ill defendants;

4. Making life imprisonment without the possibility of parole an alternative to the death penalty and clearly informing juries of the option;

5. Abolishing judge overrides of jury verdicts imposing life sentences;

6. Using comparative review of murder sentences to identify what constitutes the worst, most aggravated cases in the state and overturning outlying death verdicts;

7. Basing charging decisions in potential capital cases on full and informed deliberations;

8. Assuring that all police and prosecution evidence bearing on guilt or innocence and on aggravation or mitigation is available to the jury at trial;

9. Insulating capital-sentencing and appellate judges from political pressure; and

10. Identifying, appointing, and compensating capital defense counsel in ways that attract an adequate number of well-qualified lawyers to conduct capital cases.

Professor Liebman said explanations for the issues have been identified and a range of options for responding to the problems are available. In his view, the death penalty needs to be abolished unless those problems can be addressed.

Assemblyman Anderson commented that the issue of prosecutor misconduct had been raised in the past. Population and other economic features in a community or a particular administration could become factors when identifying prosecutor misconduct. Professor Liebman agreed, noting that controls were placed on a variety of factors in the study, including court spending, economics, homicide rates, population, and race. The study demonstrated that frequent imposition of the death penalty and expanding its use to weaker cases where it becomes necessary to be more aggressive in order to obtain the verdict desired, leads to an increased potential for error.

Senator James expressed concern regarding death penalty litigation expenses. He said the 68 percent error rate demonstrates the judicial system is working to identify problems and reverse errors before an injustice occurs. Further, the 82 percent of reversals that resulted in sentences less than death bears further consideration. Senator James asked for additional information regarding: (1) the 9 percent of reversals that were later found not guilty; (2) those cases that were not reviewed; and (3) what was done to analyze the error rates, reversal rates, and trends relating to race.

Professor Liebman reported in cases where defendants were found not guilty, either through appeals or outside the court process, there were claims of ineffective counsel and prosecutorial suppression of evidence of innocence or mitigating factors. The most disturbing factor in those cases was that both federal and state courts identified errors that led to an incorrect verdict. However, after numerous levels of review, the courts did not reverse for errors, requesting only proof of prejudice. Further, Professor Liebman said racial factors at the state level have a substantial impact on the likelihood of errors and reversals of capital verdicts. Another risk factor related to high error rates is tied to the number of homicides and pressure to take action against crime.

Regarding ineffective defense counsel, Assemblyman Nolan queried what could be done to increase the number of experienced lawyers defending capital cases. Professor Liebman stressed that expertise must be related to capital cases, which are legally and factually different from other criminal proceedings. Specialized capital defense training is available, but funding is needed for registration and travel costs. The number of defense attorneys assigned to each capital trial—a minimum of two for each case due to the amount of support needed—is another important factor. Availability of resources such as funding for deoxyribonucleic acid (DNA) evidence, forensics, and mental health experts is crucial. The combination of ample resources, experienced counsel, and multiple defense lawyers can substantially decrease the imposition of death sentences and error rates.

Assemblyman Nolan acknowledged that there were checks and balances in the data gathering process for Professor Liebman's studies but questioned the error rate for his statistical gathering. Professor Liebman explained that the study participants were able to determine the exact number of cases that were directly appealed and how many were affirmed. Hence, they were able to establish an error rate at these review levels. The cases that were affirmed on direct appeal then proceeded to the state post-conviction review level. At the state post-conviction stage, however, the study participants were only able to confirm the number of cases reversed because many of the criminal proceedings available for review were either delayed in the system or had cleared direct appeal. Therefore, in determining a conservative error rate at the state post-conviction stage, the study group divided the number of reversals at that level by the total cases available for review.

Referencing Professor Liebman's suggested reforms, Senator Neal asked for an explanation as to how all police and prosecution evidence bearing on guilt or innocence and on aggravation or mitigation would be made available to the jury at trial. Professor Liebman said it was the practice of some prosecuting offices throughout the country to provide open access to their files.

Nancy Hart

Nancy Hart, a concerned citizen, a member of Amnesty International, and Acting Chairwoman of the Nevada Coalition Against the Death Penalty, Reno, Nevada, provided the subcommittee with a list of frequently asked questions (Exhibit B) regarding the study conducted by Professor Liebman and his colleagues at Columbia School of Law, which culminated in the report *A Broken System, Part II: Why There Is So Much Error in Capital Cases, and What Can Be Done About It*. Ms. Hart did not offer any remarks.

The Honorable Frankie Sue Del Papa

The Honorable Frankie Sue Del Papa, Attorney General, Office of the Attorney General, Carson City, was joined at the witness table by David F. Sarnowski, Chief Deputy Attorney General, Office of the Attorney General, Carson City, and Victor-Hugo Schulze II, Deputy Attorney General, Office of the Attorney General, Las Vegas. Ms. Del Papa made several comments relating to statements previously heard by the subcommittee:

- It is important to recognize that all prosecutors have the ethical duty to ensure that justice is achieved.

- Prosecutors have a duty to ensure that just and fitting punishments are imposed on those who victimize others, including murderers.

- All prosecutors have a duty to their constituents to uphold the federal and state constitutions.

- Statutory laws enacted by the Legislature are presumptively legal, and the Office of the Attorney General has a duty to advocate legislative enactments.

Attorney General Del Papa reported that since 1977, the federal courts have found only one part of Nevada's statutory scheme unconstitutional—the former aggravating circumstance of depravity of mind as applied in two separate cases. She also said that no Nevada prisoner sentenced to death was found to be guilty of anything less than first-degree murder.

Continuing, Attorney General Del Papa stated that every prosecutor has a duty to cooperate with the Legislature and to provide accurate data, correct legal assessments, and effective suggestions to ensure an efficient, fair statutory scheme. These goals have been accomplished through legislative presentations, support of formal education programs at the National Judicial College, and various study groups. The Office of the Attorney General participated in the development of Supreme Court Rule (S.C.R.) 250 as part of the Fondi Commission. In addition, the Office of the Attorney General contributed to legislative hearings led by Senator James advocating increased hourly fees for defense lawyers in capital trials, appeals, and state habeas matters. The Office intends to cooperate and provide valid input to the subcommittee while presenting its perspective and representing a statewide constituency.

Attorney General Del Papa reported that even before the enactment of Nevada's current death penalty law in 1977, her constituency supported the death penalty in increasing numbers. Recent articles in the national press indicate a nationwide support for the death penalty because legislatures have determined that capital punishment is a fitting sentence for certain crimes.

Continuing, Attorney General Del Papa said that as long as there is an established system of capital punishment, officials have a duty to apply the law without regard to personal philosophies or preferences. She indicated that she respects the fact that the federal courts usually make the final decision in any given case. The judicial system is structured in such a way that federal judges, including more than 30 in the Ninth Circuit Court of Appeals, have that ability. She did not concede that final decision is necessarily reflective of the legal correctness of the opinions issued by the Ninth Circuit Court. Attorney General Del Papa related a case of abuse of the federal habeas corpus process wherein a defendant made 141 legal maneuvers over 13 years of appeals, 70 percent occurring in the federal courts. The U.S. Supreme Court finally informed the Ninth Circuit Court of Appeals that there would be no more appeals for that case.

In closing, Attorney General Del Papa questioned the validity of conclusions reached by national studies as they relate to Nevada and asserted that suspension of the death penalty is not warranted or necessary in Nevada. She argued that expenses related to federal habeas proceedings would not be eliminated even if the death penalty were abolished. In support of this contention, she pointed out that capital cases represent only a small percentage of the total federal habeas litigation in which her office is involved. With respect to the appointment of judges and campaign finance reform, Attorney General Del Papa suggested that consideration be given to potential issues relative to jurists seeking campaign contributions. Attorney General Del Papa informed the subcommittee that David F. Sarnowski and Victor-Hugo Schulze would be available to answer questions and to provide additional analysis, data, and information both at the meeting and in the future regarding individual cases and systemic issues. She noted that both men are experienced capital litigators with outstanding reputations in the state and in the country.

Michael Pescetta

Michael Pescetta, Assistant Federal Public Defender, Office of the Federal Public Defender, District of Nevada, Las Vegas, appeared as a private citizen and not in his capacity as an assistant federal public defender. He emphasized that the statistical analyses that were included in Professor Liebman's study and the materials provided to the subcommittee are based on available evidence. Interpretation and accuracy of the evidence is always open to question because there is no centralized, systematic method to track these cases in such a way that statistics and trends are readily available and easily discernable. There has been a lack of interest in the past to analyze how the capital

punishment system functions and to review death sentences. In his view, statistical reporting is needed not just in capital cases but in all homicide cases so a determination can be made regarding the administration and effectiveness of the system.

Mr. Pescetta also informed the subcommittee that certain information was not included in Professor Liebman's report such as four cases where the Nevada Supreme Court reduced death sentences on direct appeal as excessive or disproportionate. These cases demonstrate prosecutors' aggressiveness in obtaining death sentences in situations where those verdicts are not appropriate. The Nevada Supreme Court addressed the errors before the cases moved further into prolonged litigation.

Mr. Pescetta said disagreement regarding statistical data and its interpretation is inevitable. He asserted that the general trend is clear; the country has a large death row, errors have been found in capital cases, and it is costly to rectify those errors. Mr. Pescetta provided the subcommittee with a document titled "Federal Decisions Reviewing Nevada Cases" (Exhibit C). He pointed out that five of the seven Nevada cases listed in Exhibit C were reversed at the federal level, which leads him to hypothesize that these cases were not handled well originally. Responding to Attorney General Del Papa's remarks, Mr. Pescetta asserted that while only one aggravator has been ruled unconstitutional at the federal level, the Nevada Supreme Court has allowed a number of aggravating circumstances to be broadened beyond their natural scope, and these issues have never been fully litigated in the federal courts.

To reduce the number of errors in Nevada cases, Mr. Pescetta made the following recommendations:

- Limit the number and scope of aggravating factors to reduce the constitutional vulnerability of death penalty judgments. Further, eliminate the random and motiveless killing of a person as an aggravator in view of constitutional issues.

- Increase the quality of litigation with training not just for defense counsel, but also for judges and prosecutors as well. With an aggressive prosecutor or an unskilled defense counsel, the expansive nature of the aggravating factors is not litigated adequately in the state courts.

- Securing experienced counsel in state habeas proceedings remains a problem. For the purpose of considering costs and delays, either the quality of those cases needs to be improved or state habeas proceedings in capital cases should be eliminated. Such cases could be sent directly to federal habeas proceeding to reduce duplicated effort and to ensure the quality of the litigation is sufficient to identify and litigate the constitutional claims involved.

- Expand the Nevada Supreme Court's responsibility to review death penalty cases on the grounds of proportionality, to conduct thorough examination of the aggravating and mitigating factors, and to take into account considerations for race in the systemic imposition of the death penalty.

- Creation of an intermediate appellate court system to remove the routine review powers in noncapital cases from the Nevada Supreme Court is a reform whose time has come. Spreading the workload would alleviate some of the burden on the Nevada Supreme Court in order to dedicate more time to review capital cases.

Relating to the election of state court judges, Mr. Pescetta opined that politically contested popular election campaigns may have an effect on the quality of litigation in capital cases. Under the current system for state habeas proceedings, the habeas case always returns to the original judge who tried the case. There is no case in Nevada in which the judge who presided over the trial has ever granted state habeas relief.

Assemblyman Nolan asked if information requested from Mr. Pescetta at the January 24, 2002, meeting had been submitted to the subcommittee. Mr. Pescetta responded that the information related to three-judge panels would be discussed later in the hearing, but his office was still compiling the race statistics.

Senator Neal asked Mr. Pescetta to share his opinion regarding comments made by Attorney General Del Papa that Nevada constituents favor the death penalty. Mr. Pescetta replied that elected officials need to respond to the desire of the electorate and the Legislature performs an appropriate role in enforcing the popular will. Mr. Pescetta acknowledged that a significant number of Nevadans support the death penalty. However, he pointed out that they

may not have accurate information regarding administration of the death penalty. Senator Neal commented that the popular will might be better demonstrated if minorities were elected to state offices.

Ben Graham

Ben Graham, Chief Deputy District Attorney, Office of the Clark County District Attorney, Las Vegas, was joined at the witness table by Lynn Robinson, Chief Deputy District Attorney, Office of the Clark County District Attorney, Las Vegas. Mr. Graham agreed with statements made by the Attorney General, further commenting that if there are problems in Nevada, they are minimal compared to what has been found on the national level. Although it was Mr. Graham's opinion that Nevada's capital punishment system is effective, he offered his assistance to identify problems, if any, and to assist in developing solutions. In dialog with Senator Neal, Mr. Graham stated that he did not agree with Professor Liebman's statistics related to Clark County appeals, errors, and reversal rates. Mr. Graham reiterated his offer to review individual cases with any subcommittee member in an effort to facilitate an understanding of why death sentences were imposed. It was Mr. Graham's view that Professor Liebman's report did not address guilt or innocence, only legal issues.

PRESENTATION ON JUDICIAL FUNCTIONS AND THREE-JUDGE PANELS IN NEVADA CAPITAL CASES

The Honorable Robert E. Rose

The Honorable Robert E. Rose, Associate Justice, Nevada Supreme Court, Carson City, stated that the role of judiciary with regards to the death penalty is to process capital cases through the criminal justice system according to Nevada law. Two additional procedures are attached to these cases: (1) death qualification of the jury; and (2) holding a penalty hearing after the first-degree murder verdict is rendered. Justice Rose explained that death penalty cases are tried pursuant to S.C.R. 250 and usually take place approximately one year after the indictments have been returned. Death sentence cases are automatically appealed to the Nevada Supreme Court at the rate of two to five per year.

Justice Rose explained that the Nevada Supreme Court has a capital case team in its central legal staff consisting of four attorneys who review all death penalty cases and write bench memoranda that assist the judges in handling the cases. All direct appeals of death penalty cases are argued before the full court. Familiar issues include: (1) improper legal instructions to the jury; (2) insufficient evidence to support the charged aggravators or the aggravating factors do not fit the facts of the case; (3) prosecutorial misconduct; and (4) the death sentence is excessive for the crime committed. If reversible error is found in the guilt phase, the case is returned for a full trial. If an error is found only in the penalty phase, the case is reversed only for a new penalty hearing. If the verdict is affirmed, the defendant has one year to file a post-conviction relief petition, usually alleging that his trial or appellate counsel was inadequate, which is a violation of the *United States Constitution*.

Continuing, Justice Rose reported that the death penalty team, in existence for four years, has reviewed 22 direct appeals with some relief given in 4 cases, for an 18 percent reversal rate, and 28 post-conviction petitions with some relief given in 4 cases, for a 14 percent reversal rate. The reversal rate for all other criminal cases is from 10 to 12 percent. There are no statistics for pre-1998 adjudications, but it is Justice Rose's opinion such data would be similar to the last four years. Currently, there are 17 death penalty cases pending in the Nevada Supreme Court, 4 on direct appeal and 13 on post-conviction petitions.

Justice Rose provided the subcommittee with the following materials (Exhibit D):

- A document titled "Nevada Supreme Court Clerk's Office, Selection of 3-Judge Panels in Capital Cases";
- A document titled "Assignments of Three-Judge Panels in Death Cases, Updated: September 19, 2001"; and
- Various Nevada Supreme Court documents impaneling three-judge panels to conduct penalty hearings in capital punishment cases.

In addressing the topic of three-judge panels, Justice Rose noted that 43 three-judge panels have been convened in Nevada since 1978. The three-judge panel was created pursuant to *Nevada Revised Statutes* (NRS) 175.552, "Requirement; jury; panel of judges; evidences; waiver"; NRS 175.556, "Procedure when jury unable to reach unanimous verdict"; and NRS 175.558, "Procedure when person is convicted upon plea of guilty or guilty but mentally ill or upon trial without jury and death penalty is sought." He explained that the three-judge panel review process is used when a jury in a capital case is unable to reach a sentencing decision or when a defendant pleads guilty to murder and the prosecution seeks the death penalty.

Justice Rose reported that under the direction of Chief Justice A. William Maupin, the Nevada Supreme Court began a new selection process for three-judge review panels last year. Under the current procedure, the presiding judge on a death penalty case may not set the penalty hearing until the three-judge panel is selected. In addition, service on the three-judge panel is random and mandatory. Three-judge panels were convened to render judgments on 13 cases where the jury was unable to reach a unanimous verdict, 28 instances where there was a guilty plea to first-degree murder and the prosecution was seeking the death penalty, and 2 on remand from the Nevada Supreme Court.

Referencing Professor Liebman's suggestion to insulate judges from political pressure, Justice Rose reminded the subcommittee of the recommendations made by the Nevada Judicial Assessment Commission to select judges under a system called the "Nevada Plan," modeled after the Missouri Plan. The plan proposed that the Commission would appoint all judges. After two years of service, these judges would compete in an open election. The judge elected would then serve on a retention basis, seeking re-election every six years. Justice Rose noted the Nevada Plan would remove from the judicial selection process some of the politics and the need to raise campaign funds, but retain the electorate's right to vote for or against the judge selected by the Commission. The Nevada Plan has been presented to the Legislature twice but has not received legislative support. Justice Rose suggested that the subcommittee may wish to revisit the Commission's recommendation if it is interested in reducing the political involvement of judges.

Chairwoman Leslie queried Justice Rose regarding Nevada's use of the three-judge panel. She also asked how Nevada's lack of African-American judges might impact the potential bias of the three-judge panels. Responding, Justice Rose stated that it is his understanding that both Colorado and Nebraska also utilize three-judge review panels as part of their capital punishment systems. He pointed out that the Nevada Supreme Court has held that the three-judge panel review process is constitutional. Continuing, Justice Rose noted that the most significant decision a juror can make is whether to impose the death penalty, and in his view, the defendant is entitled to a trial by jury as a matter of policy rather than on a legal basis. He indicated that his personal preference would be to eliminate three-judge panels and require that a jury determine the penalty.

Justice Rose reported that there are two African-American judges in Clark County who are called on a random basis to serve on three-judge panels. He acknowledged that the statistics presented to the subcommittee are cause for concern and examination. Further, he observed that in his view, a defendant's economic status is of equal or greater importance than his race, noting that a person of substantial means is able to secure the best legal representation and has a greater chance of establishing reasonable doubt.

Senator Neal asked Justice Rose to share his thoughts on Professor Liebman's suggestion that proof beyond any doubt that the defendant committed the capital crime be required before the death penalty may be considered. Justice Rose responded that it was a viable policy option but would require further consideration. He suggested that consideration be given to eliminating or limiting the scope of some of the 14 aggravators. The goal is to reduce those who are eligible for the death penalty to offenders who commit the most aggravated crimes.

Chairwoman Leslie asked Justice Rose which aggravators should be eliminated. Justice Rose suggested that the motiveless and random killing of another person should be removed as an aggravating factor. Further, he recommended limiting the scope of the aggravating factor of killing of another person that endangers two or more people. In his opinion, both of these aggravators have been applied too broadly.

The Honorable Jerry Polaha

The Honorable Jerry Polaha, District Judge, Second Judicial District Court, Reno, discussed the district court's function with regard to capital punishment cases. He explained that usually in a habeas corpus proceeding, the court reviews the case to ensure sufficient probable cause exists to continue with the action. The court also rules on discovery motions to ensure the defense has been provided with the materials that the state claims to have against the

defendant, and the defense has an opportunity to contest the aggravators offered by the prosecution. In addition, the court reviews the notice to seek the death penalty to make certain it complies with the law and sets status conferences to monitor the progress of the case as it approaches trial.

Continuing, Judge Polaha offered his observations on capital proceedings both as a judge and as a former defense lawyer with experience in death penalty cases. He noted that defendants rarely have sufficient funds to hire a private defense attorney. In some instances, the defendant's family approaches an attorney with a regular practice seeking assistance on a death penalty case. While the family does not have sufficient funds to pay all the costs of the case, it has enough to satisfy the attorney's fee. Typically the attorney accepts the case and then petitions the court for defense services. Because the budget for these services is limited, such petitions ultimately present a problem for the court.

With respect to discovery procedures in capital cases, Judge Polaha suggested that the Legislature consider requiring prosecutors to provide all documents in their files, including the notes of investigators and scientists and witness interview statements, to defense counsel. He noted that this open discovery process is utilized in the federal court system.

Judge Polaha also suggested that raising the training requirements for attorneys would increase the efficiency of the bar.

The Honorable Michael R. Griffin

The Honorable Michael R. Griffin, District Judge, Department 1, Carson City, stated that he has served as a district judge since 1979. He noted that because of the state prison's location in Carson City, for a number of years he and former Judge Michael Fondi were responsible for hearing most of the state post-conviction writs.

Judge Griffin reported that during the course of his career on the bench, he has been involved in four death penalty cases and served on five three-judge review panels. He commented that the state's two African-American district court jurists, Judge Lee A. Gates, Eighth Judicial District Court, Department 8, and Judge Michael L. Douglas, Eighth Judicial District Court, Department 11, both serve in Clark County. Further, because Judge Douglas is on a criminal track, he would likely hear capital cases on a regular basis. Judge Griffin offered to answer the subcommittee's questions regarding the three-judge review panels utilized in capital cases.

Assemblyman Anderson asked Judge Griffin to share his opinion as to whether the three-judge review process increases the likelihood that a defendant will receive the death penalty. Responding, Judge Griffin stated that in his personal experience, a defendant was not more or less likely to receive the death penalty from a three-judge panel as compared to a jury. He also pointed out that a decision by the three-judge panel to impose the death penalty must be unanimous. Judge Polaha, previously identified on page 15 of these minutes, added that in his view, lawyers perceive that a defendant would fare better before a judge because a jurist is likely to have had greater exposure to capital offenses. He noted, however, that he was unsure whether data would support his view.

Chairwoman Leslie asked Judge Griffin and Judge Polaha to share their views regarding the impact of political pressure on elected judges who serve on three-judge panels. Judge Griffin acknowledged that while a judge's actions might cause certain political implications, in his experience, their decisions follow the rule of law, regardless of the consequences. Continuing, Judge Griffin pointed out that the three-judge panel consists of the sitting judge and two other jurists from jurisdictions other than the district in which the capital case was originally heard. Hence, two of the three judges making the decision are functioning outside their own communities. Further, he reiterated that any determination to invoke the death penalty must be unanimous. Judge Polaha agreed with Judge Griffin's comments.

Referencing Professor Liebman's testimony, Senator Neal questioned whether elected judges are more likely to favor the death penalty than those who are appointed. He also inquired whether Judge Griffin or Judge Polaha had ever been affected by their decisions on the bench relative to their stance on crime or the death penalty. Judge Griffin explained that the public's perception of whether a judge is "tough on crime" does not always accurately reflect the facts. He pointed out, for instance, that while two judges might impose the same penalty for a crime, a judge who verbally expresses strong condemnation of the defendant at the time of sentencing is likely to be perceived by the public as imposing a more severe sentence and being less sympathetic to the offender. Judge Polaha agreed, pointing

out that the determination to seek the death penalty is made by the Executive Branch of government, and the decision to impose the death penalty is made by the jury in most cases. Continuing, Judge Polaha emphasized that the function of the district court in capital cases is to ensure fairness in the process.

Assemblyman Nolan commented that much of the testimony provided to the subcommittee has centered on the race of both the defendant and the judges. He asked Judge Griffin what additional insight or perspective a judge of the same racial background as the defendant might offer a three-judge review panel. Judge Griffin observed that the life experiences and perspectives of each jurist are unique. In deciding whether to impose the death penalty, the panel must enumerate the aggravators and then consider any mitigating circumstances. Because no two judges share the same life experiences, perceptions of what factors qualify as an aggravator or a mitigator might differ from one jurist to another.

Maizie W. Pusich

Maizie W. Pusich, Chief Deputy Public Defender, Washoe County Public Defenders' Office, Reno, provided the subcommittee with a list of cases of which she is aware that were decided by three-judge panels (Exhibit E) and made brief comments explaining the list.

Michael Pescetta

Michael Pescetta, previously identified on page 10 of these minutes, presented a memorandum (Exhibit F) to the subcommittee together with three attachments relating to three-judge panel issues. He emphasized that Nevada's statutory scheme is unique. The only way a case is heard by a three-judge panel is after a guilty plea is entered or as the result of a hung jury.

Mr. Pescetta said that a three-judge panel is not a recompense for an attorney who could not persuade a jury in their decision. It is his opinion that if a jury cannot agree on a verdict, new jurors should be impaneled for the penalty phase or a default sentence of life without the possibility of parole (LWOP) should be imposed. A three-judge panel can impose a sentence less than death by a simple majority, unlike the death penalty sentence that must be unanimous. There is a case before the U.S. Supreme Court that will address whether judge sentencing is constitutional. In his view, Nevada's system is vulnerable to legal challenge.

Continuing, Mr. Pescetta said that is impossible to have an African-American jurist participate on a three-judge panel in Clark County unless he has presided over the trial. He pointed out that since the law requires two jurists from other districts to serve on the three-judge panel along with the original trial judge, most cases will be heard by all-white panels. Referring to Justice Rose's comment on insulating judges from political pressure, Mr. Pescetta opined that when two of the three jurists on the three-judge panels are from outside the judicial district in which a case was tried, it might be difficult for this body to express the conscience of the community. When a penalty jury chosen from the Las Vegas community cannot reach a unanimous verdict and a three-judge panel with rural jurists makes that decision, it was Mr. Pescetta's opinion that the results in these cases are skewed. In his view, the decisions of three-judge panels regarding offenses committed in urban areas are affected by the participation of conservative judges from rural counties.

Referring back to Professor Liebman's remarks, Assemblyman Anderson noted the greater the number of capital cases, the higher the potential for error. This could happen more frequently in urban counties than rural areas by the nature of population. Assemblyman Anderson asked for clarification on Mr. Pescetta's statement that inferred this would happen more frequently in the rural areas. Mr. Pescetta said district judge from both rural and counties usually do not have any responsibility for sentencing as the cases are decided by jury verdict. It is only when there is a guilty plea or a three-judge panel that a district judge has any sentencing responsibility. It was Mr. Pescetta's opinion that virtually all of those cases come from urban counties. When rural jurists serve on a three-judge panel in an urban district, they may lack experience dealing with capital sentencing proceedings and tend to be more conservative in their judgments, which increase the likelihood of imposing the death penalty.

Chairwoman Leslie asked Mr. Pescetta to suggest recommendations for reform. Mr. Pescetta responded that if a defendant pleads guilty, the case should proceed to a penalty jury. There is a question whether a defendant should prevent counsel from presenting mitigating circumstances. Mr. Pescetta noted that by impaneling a penalty jury, a defendant would be precluded from asking for the death penalty, which many view as state-assisted suicide. The two

default mechanisms could be to impanel another penalty jury or to impose a sentence of LWOP. In terms of cost and efficiency of the capital punishment system, establishing default mechanisms becomes a simple solution.

Daniel J. Greco

Daniel J. Greco, Chief Deputy District Attorney, Criminal Division, Office of the Washoe County District Attorney, Reno, said there are three situations where a three-judge panel is utilized:

1. The defendant pleads guilty to first-degree murder;

2. After the defendant waives his right to a trial by jury, the judge determines the offender is guilty of first-degree murder; or

3. A jury finds the defendant guilty of first-degree murder but is unable to reach a unanimous decision regarding the penalty.

Mr. Greco reported that defendants who have been sentenced to death by three-judge panels have raised numerous constitutional challenges to the statutes that established this mechanism (NRS 175.552 through NRS 175.562 "Procedures when panel of judges unable to obtain concurrence of majority for sentence less than death"), and the Nevada Supreme Court has consistently rejected all the appeals. The three primary challenges raised by defense attorneys have been:

1. The defendant's right to an impartial tribunal has been violated because the statutes did not provide a mechanism whereby the offender can remove one of the three judges whom he or she does not like;

2. Because three-judge panels return verdicts of death at a higher rate than juries, the statute violates the defendant's right to due process; and

3. The statutes are unconstitutional because the Nevada Constitution does not specifically authorize three-judge panels.

Mr. Greco disagreed with previous statements related to three-judge panels being stricter and imposing death sentences more frequently than juries. In Mr. Greco's opinion, the reason three-judge panels return verdicts of death more frequently than juries is because the majority of cases have defendants who have pled guilty to first-degree murder with overwhelming evidence against them.

Senator Neal asked Mr. Greco for suggestions to make improvements to the capital punishment system. Mr. Greco expressed concern regarding the aggravating factor of the random and motiveless killing of another person.

Lynn Robinson

Lynn Robinson, previously identified on page 12 of these minutes, said she was available to answer questions but had no formal comments.

JoNell Thomas

JoNell Thomas, private attorney, representing Nevada Attorneys for Criminal Justice and the American Civil Liberties Union of Nevada, Las Vegas, said her concerns regarding three-judge panels were delineated in a memorandum provided to the subcommittee (Exhibit G). She shared her experience on a particular case, concluding that three-judge panels should be abolished.

Senator Neal asked for clarification as to why the three-judge panels violate the equal protection clause of the *United States Constitution*. Ms. Thomas replied with examples of the distinction between two classes of defendants facing appeals. The first defendant faces a jury, receives a death penalty, and the case proceeds to appeal where the Nevada Supreme Court finds the verdict to be invalid. That defendant is allowed to have a new jury and he or she will face less of a risk of being sentenced to death. The second defendant also has an invalid verdict because the jury could not reach a decision. In that case, the defendant is penalized by being subjected to a three-judge panel rather than going

before another jury. It was Ms. Thomas' opinion that two classes of defendants were treated differently without a sound basis for doing so—that is the violation of the equal protection clause. Senator Neal queried if her concern was because the end result was death. Ms. Thomas said strict scrutiny should be applied when the death penalty is an issue.

In response to a question from Assemblyman Nolan, Ms. Thomas agreed that experience is an important factor related to counsel competency, but caseload is also an issue. Ms. Thomas said that no amount of experience will matter if the attorney does not have the time or resources to devote to the case.

Relating to comments made by Mr. Graham regarding the one death penalty decision rendered last year in Clark County, it was Ms. Thomas' opinion that only one death sentence during the year was not the norm. There were other capital cases where the death penalty was sought, but the juries declined to impose such a sentence.. Still, resources were used to prosecute and defend those cases. Ms. Thomas disagreed with the statement that no defendant convicted of a capital crime in Clark County has ever been found innocent at a later date. She noted there is no mechanism where a defendant can demand to be declared innocent, just not guilty. Ms. Thomas had a number of recommendations regarding appeals:

1. State habeas corpus proceedings in death penalty cases are ineffective. Conflict of interest allegations prevent the public defenders' offices from conducting these cases, and few private attorneys are willing to participate in these proceedings. Short of abolishing the state proceedings, funding and training of qualified attorneys are needed.

2. The Nevada Supreme Court should be allowed to perform proportionality review, and statutes should be revised to mandate this responsibility.

3. Relating to the state-assisted suicide issue, defendants should not be allowed to waive appeals.

4. Defense attorneys, judges, and prosecutors should be well trained on a regular basis on issues pertaining to death penalty cases.

5. Payment issues should be addressed.

6. Within the discovery process, prosecutors should be required to make available all files to the defense.

Senator Neal asked how the public defenders' offices could be conflicted by a habeas corpus case. Ms. Thomas said in cases where there are claims of ineffective counsel, if the original attorney was from a public defender's office, a public defender cannot represent the defendant on appeal. In many cases, a public defender may represent a witness or a victim and cannot present arguments against a former client.

PRESENTATION ON THE DEATH PENALTY AS A DETERRENT AND THE PERSPECTIVE OF VICTIMS

Assemblyman Anderson, with the indulgence of the chair, indicated that the Nevada Legislature over the past several sessions has specifically addressed the needs of victims of crime. He read a statement into the record (Exhibit H) related to reforms that have been made on behalf of victims of crime. Exhibit H also includes summaries of selected bills from the 1995, 1997, 1999, and 2001 Legislative Sessions.

Matt Leone

Matt Leone, Associate Professor of Criminal Justice, University of Nevada, Reno, of Reno, said the goal of his presentation was not to influence opinions. The death penalty is a difficult topic to discuss, and most people are not open to change. Professor Leone reported that criminal justice studies on the death penalty for the past 25 years have shown that capital punishment does not achieve deterrence. One study conducted ten years ago indicated that executions made the problem of murder and violent crime worse. Over the last few years, three noncriminal justice studies have shown that executions act as a deterrence to crime

Professor Leone said there are differences between the studies that demonstrate that capital punishment is a deterrent

and those that indicate it does not discourage crime. Those that show there is no significant or valid relationship between deterrence and executions are criminal justice-related studies conducted by those who are familiar with the inner workings of the criminal justice system. The three current studies are econometric analyses that utilize different types of variables, which are entered into large formulas and are open to interpretation. The econometric studies make a number of methodological errors by criminal justice standards:

- Mixing federal-, state-, and county-level data and using it simultaneously;
- Assuming that a current execution will have an impact on murder rates one to four years in the future. Crime is cyclical; crimes increase and then decrease, which is a common occurrence. Depending on your desired conclusion, studies can lag data to obtain any projected result;
- Forcing variables to fit the models, known as data transformations or data normalization;
- Using small indices to determine a larger conclusion; and
- Ignoring pertinent data such as drug supply and demand because it does not fit the model.

Continuing, Professor Leone cautioned it could be risky to use econometric studies when changing policy. He pointed out that these econometric studies are also missing information. In order to prove that executions deter crime, one potential murderer who chose not to kill because of fear of the death penalty would need to be found. It is Professor Leone's opinion that random violent murderers are generally not linked to popular media, and they may not be aware of executions. Consequently, it cannot be assumed that an execution a person is not aware of could change his or her behavior in the future.

Professor Leone then considered why the death penalty is retained. Many believe the death penalty is still the only option and the common and acceptable response to murder is death. Professor Leone reported that surveys show if the public is aware of the option of LWOP, the support for the death penalty decreases substantially. The public perceives the death penalty as a method to assure that a murderer never returns to society; LWOP is an alternative that could achieve the same result. Another reason for retaining the death penalty involves appeals that result in the lesser sentence of LWOP. In some cases when a defendant is sentenced to LWOP, within ten years that inmate is allowed to apply for a commutation of that sentence to life with the possibility of parole and a few years later, that person can apply for parole. Thus, LWOP does not mean the offender cannot be paroled. Consequently, the death penalty is the only guarantee that an offender will never be released.

Senator James stated that the 1995 Legislature enacted Senate Bill 416 (Chapter 443, *Statutes of Nevada 1995*), which "makes various changes regarding sentencing of persons convicted of felonies." Senator James stated that this bill prohibits the State Board of Pardons Commissioners from commuting a sentence of death or LWOP to a prison term that allows parole.

David F. Sarnowski, previously identified on page 9 of these minutes, stated that only a gubernatorial pardon could reduce a LWOP sentence.

Continuing his testimony, Professor Leone said that in states that do not use the death penalty, truth-in-sentencing laws are resulting in decreased crime. Senator James said the effects of Nevada's truth-in-sentencing laws, passed in 1995, would not have been reflected in Professor Liebman's study. There has been a dramatic decrease in Nevada's crime rate since 1995. Further, Senator James noted that while the existence of truth-in-sentencing laws may not in and of itself affect crime, inmates are not committing crimes on society. In response to Senator James' comments, Professor Leone said another error made by the recent econometric studies was that they did not project forward enough to track significant changes in crime that have occurred over the past five years. In state studies where the death penalty has been abolished, relative fluctuations in crime cannot be directly attributed to the change in the death penalty.

Professor Leone asserted that when the death penalty is used too much, capital punishment becomes routine and loses its validity. Professor Leone said that historically when the lives of citizens are valued so little that great numbers can be executed, it is a sign that a government or a society is on the verge of overthrow—a prelude to revolution.

Changes in Texas' crime rate have paralleled those on a national level, demonstrating that the death penalty has had no deterrent value.

Continuing, Professor Leone stated that for capital punishment to be a deterrent to crime, it must contain three elements: (1) certainty; (2) severity; and (3) swiftness. He noted that the element of certainty would eliminate consideration of any mitigating factors, e.g., if the defendant were found guilty of murder, execution would be automatic. In order for the punishment to be severe, suffering-based methods of execution would be utilized instead of other mechanisms such as lethal injection that are perceived by the public to be more humane. The third element of deterrence would require that executions be conducted quickly and without delay.

Professor Leone asserted that because current statute does not allow these three elements of capital punishment to be met, deterrence of crime cannot be achieved. Further, he cautioned that if the laws were changed to allow capital punishment to be administered as a deterrent, innocent people would be executed. Professor Leone argued that if capital punishment cannot be administered in a manner that achieves deterrence of crime, then the penalty of death should be eliminated and LWOP used in its place. He suggested that the issue of whether to continue the practice of capital punishment is not one of economics or morality but rather of practicality, and reform efforts should focus on achieving crime deterrence in other areas of the criminal justice system, e.g., ensuring the element of certainty is maintained in sentencing.

Senator James clarified that there are two separate types of deterrents: general and specific. A specific deterrent could be proven if, for example, a person was identified who did not commit a murder because of fear of capital punishment. In contrast, the concept of general deterrence is more difficult to understand. Senator James explained that general deterrence is the perception that our society is just; hence, if a person commits murder, certain consequences will ensue. This perception ensures that most people will abide by the laws of society and respect the justice system. In his experience as a legislator, victims have confidence in the justice system only if they feel the laws of society have been fairly applied. Further, he asserted that capital punishment is not a moral issue but rather a concept of justice.

Professor Leone explained that for most people, general deterrence results from fear of the justice system. For these people, it is not the specific punishment that acts as a deterrent to crime; rather, it is the knowledge that there is a consequence. Continuing, Professor Leone asserted that when an unknown fear of the justice system is replaced with a specific consequence, the deterrent becomes less effective. He pointed out that each time an offender is incarcerated, he or she becomes less fearful of the criminal justice system. Habitual offender laws are designed to compensate for this lost deterrence. He cited Nevada's drunk driving laws as an example of specific deterrence that was developed to discourage repeated offenses. In his view, deterrence is also dependent upon certainty of punishment.

Assemblyman Nolan asked whether measurement of the death penalty's deterrent value is precluded by the improbability of identifying persons who have chosen not to commit murder because of fear of capital punishment. Professor Leone acknowledged that identification of such individuals is unlikely. Continuing, he noted that most criminal actions tend to be emotional and illogical. In establishing capital punishment as a deterrent to crime, society is attempting to force logic into a situation that is by its nature emotional and illogical. In his view, it is impossible to deter a person from committing a crime if he is not considering the consequences of his actions. Assemblyman Nolan pointed out that not all murders are unpremeditated. Professor Leone acknowledged that premeditated murders occur, and stated that the motive for these types of offenses is typically financial gain. He stated that most inmates tend to be poor decision makers who underestimate their risk of being caught and overestimate the potential profit of their crime. He asked the subcommittee to remain mindful that inmate studies concern unsuccessful criminals, not those who have escaped detection and punishment.

Victor-Hugo Schulze II

Victor-Hugo Schulze II, Deputy Attorney General, Office of the Attorney General, Las Vegas, stated that he has worked in the Special Prosecutions Habeas Corpus Unit for the past seven years. He is also Nevada's representative to the Bias and Hate Crimes Task Force of the National Association of Attorneys General and performs various tasks in the area of crime victim advocacy. Mr. Schulze read into the record a prepared statement titled "Remembering the Victim: A Report on the Demographic and Social Effects of Crime on Victims" (Exhibit I).

Mr. Schulze remarked that the Office of the Attorney General promotes the rights and involvement of victims of crime within the criminal justice system in several ways:

- The Attorney General serves as the chair of the Nevada Domestic Violence Prevention Council, and the Office functions as the grant coordinator for federal funds dispersed under the Violence Against Women Act.

- With the assistance of the Clark County District Attorney's Victim Witness Assistance Center and the Community Coalition for Victims' Rights, the Office drafted and distributes the "Handbook for Victims of Violent Crime."

- A reference collection of legal, social, and service related items concerning victims of crime is being compiled by the Office.

- The Office operates a crime prevention program, which conducts community outreach to teach victims strategies of crime avoidance and personal protection.

Continuing, Mr. Schulze said that between the years 1996 and 2000, the crime rate declined in the face of good economic times. Unfortunately, criminal victimization is again on the rise. Criminal victimization affects people at the societal level and as individuals. Mr. Schulze detailed demographic statistics from two sources:

- The *National Crime Victimization Survey*, 1995-1998 editions, published by the Bureau of Justice Statistics, U.S. Department of Justice. This is a survey-based study of crime and victimization in the country with data collected each year from a sample of 94,000 individuals. It is a combined effort of the Census Bureau, U.S. Department of Commerce, and the Bureau of Justice Statistics, U.S. Department of Justice. Measured crimes are limited to aggravated assault (referred to in Nevada as either battery with a deadly weapon or battery with substantial bodily harm), simple assault (simple battery), household burglary, motor vehicle theft, pick pocketing and purse snatching, robbery, sexual assault, and theft. Excluded are commercial crimes, kidnapping, and murder.

- The *Uniform Crime Reports*, 1995-2000 editions, published by the Federal Bureau of Investigation. This is a national cooperative statistical effort, begun in 1930, of nearly 17,000 state, county, and city law enforcement agencies reporting data on crime and victimization. Crimes include aggravated assault, arson, burglary, hate crimes, larceny and theft, motor vehicle theft, murder, robbery, and sexual assault.

In conclusion, Mr. Schulze said the persons most significantly affected by social violence and dysfunction are victims of crime. He suggested that changes in the criminal justice system should first be directed toward victims and should strive to identify potential solutions to increasing victimization.

David Mouen

David Mouen, member of Families of Murder Victims, Las Vegas, testified that his son, Mathew, and three other boys were killed on August 14, 1998. There was significant publicity regarding the offense, and the case entailed: (1) consideration of DNA evidence; (2) the conduct of numerous trials wherein hearings were held on a total of 721 motions related to 14 charges for each of the three individuals accused of the murders; (3) examination of racial issues; and (4) the utilization of three-judge panels. Mr. Mouen indicated that his purpose in testifying before the subcommittee was to assist the members in understanding how the murder of his son has impacted his life. He asserted that those who have never experienced the loss of a loved one through murder are unable to fully appreciate the effect of such an event on victims' families. Mr. Mouen stated that prior to his son's murder, he did not have a strong opinion regarding capital punishment, but he now favors the death penalty.

Sandy Sharp

Sandy Sharp, a member of Families of Murder Victims, Las Vegas, reported that on October 23, 1992, her 15-year-old son, Rory Sharp, was murdered. She read into the record a prepared statement (Exhibit J) provided by Sandi Viau, who was unable to attend the meeting. Ms. Viau's statement cites statistics and quotes various articles in support of the death penalty. Tracy Gorringe, Ms. Viau's 20-year-old son, was murdered on August 14, 1998. One of the three murderers received the death penalty, and the other two were sentenced to LWOP.

Kathleen Testa Smith

Kathleen Testa Smith, mother of a murder victim, said that her daughter, Jennette Wren Testa, was murdered on July 3, 1999. Ms. Smith read into the record a prepared statement (Exhibit K). While Ms. Smith would have preferred that the murderer, Jonathan Lloyd, receive a sentence of death, it is unlikely that he would have been eligible for such a penalty. As the result of a plea agreement, the murderer is serving two consecutive life terms in Ely State Prison: (1) life with the possibility of parole after five years for first-degree kidnapping; and (2) LWOP for first-degree murder.

Continuing, Ms. Smith stated that Mr. Lloyd also received a five-year sentence for drug possession, and he was eligible for parole on that charge after serving 18 months. Ms. Smith received a parole hearing notice advising her that Mr. Lloyd was eligible for parole on the drug charge in November 2000. She explained that if granted parole on the drug charge, Mr. Lloyd would begin serving the sentence imposed relative to his conviction for first-degree kidnapping. Ms. Smith reported that Mr. Lloyd's next parole hearing would take place in 2006, at which time she will make a victim statement to the State Board of Parole Commissioners. Should Mr. Lloyd ever be granted parole on the first-degree kidnapping conviction, he would not be released from prison; rather, he would begin serving his sentence of LWOP for first-degree murder.

Ms. Smith said she supports the death penalty as a humane manner to remove a person from society. In her opinion, Mr. Lloyd made a decision to remove himself from society by committing murder. In closing, Ms. Smith said that every prison space occupied by an inmate serving a life sentence results in one less cell available for another offender.

Ron Cornell

Ron Cornell, member of Families of Murder Victims, Las Vegas, spoke in support of capital punishment. Mr. Cornell reported that on July 16, 1998, his 16-year-old son, Joey, was shot in the back and killed by a 38-year-old man. With his son at the time of the murder were an African-American man, a Hispanic man, and a white man. He prefaced his remarks by stating that his friends have diverse racial backgrounds, and his comments were not intended to be racial in nature.

Mr. Cornell commented that opponents of the death penalty contend that capital punishment is morally wrong and is the product of a barbaric and biased society. In response to this contention, he questioned the morality of a society that affords more rights to the offender than it does to victims and their families. He pointed out that his son did not receive the benefit of a trial by jury or the opportunity of an appeals process.

With respect to allegations that the death penalty is racially biased, Mr. Cornell referenced a Federal Bureau of Investigation study which indicates that African-Americans are more likely that other racial groups to commit capital crimes. In his view, individuals who commit crimes should be prepared to accept the consequences of their actions, regardless of their race.

Continuing, Mr. Cornell acknowledged that the state's system of capital punishment is ineffective and advocated addressing areas of concern rather than abolishing the death penalty. He pointed out repeated court appearances force victims and their families to relive the painful events surrounding the offense. Mr. Cornell stated that he and the majority of his colleagues agree with the suggestion offered by Philip J. Kohn, Special Public Defender, Clark County Special Public Defender's Office, at the subcommittee's January 24, 2002, meeting that: (1) judges be required to provide both the defense and the prosecution with adequate time to question prospective jurors; and (2) counsel be allowed individual voir dire in capital punishment proceedings.

Referencing concerns regarding the competency and effectiveness of public defenders, Mr. Cornell recommended: (1) the creation of an annual review board to assess the skills of defense counsel that represent individuals charged with capital crimes; and (2) a slight increase in funding to ensure proper case preparation in death penalty proceedings. Mr. Cornell also advocated the death penalty for all offenders who deliberately and intentionally take the life of another person.

Concluding his remarks, Mr. Cornell asked that victims and their families be treated fairly and justly and that they be

allowed to live without fear of having to repeatedly relive the offense in court. He urged the continued use of capital punishment and requested that such penalties be completed in a timely manner.

Bud Welch

Bud Welch, Board Member, National Organization of Murder Victims' Families for Reconciliation, Oklahoma City, Oklahoma, provided the subcommittee with a written statement regarding the death of his daughter Julie in the 1995 bombing of the Alfred P. Murrah Federal Building in Oklahoma City. Mr. Welch stated that his daughter was opposed to capital punishment and at the age of 16, she formed an Amnesty International Chapter at her high school.

Mr. Welch explained that after his daughter's death, he was consumed with rage. For ten months, he wanted revenge against the two men responsible for her murder, Timothy McVeigh and Terry Nichols. He described visiting the site of the bombing often and finally reaching a point where he questioned what would help him move beyond his rage. After months of contemplation, Mr. Welch concluded that executing his daughter's murderers would constitute an act of revenge and hate, the very emotions that had led the Timothy McVeigh and Terry Nichols to take the lives of so many people.

Remembering a television interview of Bill McVeigh, Tim McVeigh's father, Mr. Welch recognized the impact of the son's actions on his own family. Although a large man of 6 foot 3 inches, Bill McVeigh was physically stooped in grief with a deep pain in his eyes. Mr. Welch recounted his visit with Bill McVeigh at his home just prior to Tim McVeigh's execution.

Continuing, Mr. Welch indicated that he derived no peace or satisfaction from the execution of Timothy McVeigh. In his view, capital punishment does not serve as a deterrent to crime, and executions are political events. Mr. Welch reported that since becoming involved in the Innocence Project in Chicago, Illinois, 100 former death row inmates have been freed. On January 31, 2000, the Governor of Illinois instated a moratorium on the death penalty in that state.

Concluding his remarks, Mr. Welch questioned why the vast majority of murderers escape capital punishment while others are sentenced to die. He asserted that the only offenders who receive the death penalty are those of who lack the economic resources to pay for their own defense.

PRESENTATION ON NEVADA'S RULES PERTAINING TO PROCEDURE AND ARGUMENT DURING A CAPITAL TRIAL

Philip J. Kohn

Philip J. Kohn, Special Public Defender for Clark County, Las Vegas, appeared on his own behalf and not in his official capacity. He reported that Assembly Bill 327 of the 2001 Legislative Session, which failed to pass, proposed to revise the order in which arguments must be presented during the penalty hearing in cases where the death penalty is sought. Mr. Kohn presented proposed amending language in Exhibit N for NRS 175.554(1), "Order of trial." *Nevada Revised Statutes* 175.141(5) as now written requires the district attorney or attorney for the state in a criminal trial to open and conclude oral arguments. Mr. Kohn had no dispute with the statute in the trial stage where the entire burden of proof is on the government. In his opinion, the penalty phase of a death penalty trial is different in that the rules of evidence are lax, hearsay is admissible, and there are two burdens of proof: (1) the state must prove the existence of one or more aggravators; and (2) the defense must show that mitigation outweighs aggravation. Mr. Kohn noted that the evidence of mitigation is not placed before the jury until the penalty phase. He asserted that the prosecution uses NRS 175.141 to its advantage, making a short opening statement and then final argument after the defense has made its closing remarks. Mr. Kohn stated that oftentimes the prosecution raises issues never mentioned in prior arguments, knowing the defense will not have an opportunity to offer a rebuttal. The proposed amendment would allow for rebuttals by the defense. *Nevada Revised Statutes* 175.141 applies to arguments of counsel, and it would not conflict with previous legislation that permits victims to make final remarks during the sentencing hearing in a criminal case.

Assemblyman Oceguera asked about aggravators in the Jennette Wren Testa case. Mr. Kohn responded that

decisions to seek the death penalty appear arbitrary. He did not understand why the death penalty was not sought in that case. He stated that the U.S. Supreme Court has held the death penalty cannot be automatically applied and there must be individual sentencing. Mr. Kohn said the imposition of capital punishment may never be fair, and for this reason, he advocates LWOP as the best sentence.

Michael Pescetta

Michael Pescetta, previously identified on page 9 of these minutes, addressed the topic of pretrial discovery. He reported that one issue frequently raised on habeas review is the failure of the prosecution to disclose to the defense during the discovery process benefits given certain witnesses or other evidence that is in the possession of the police department. Mr. Pescetta suggested that statute be amended to require the prosecution to maintain an open file for examination by the defense, including material in the possession of the police department. He pointed out that while the Clark County District Attorney's Office currently has an open file policy, not all materials in the possession of the police department are included.

Assemblyman Anderson observed that the prosecution may not be aware of or possess all such information. Mr. Pescetta agreed, stating that in some instances this circumstance may be deliberate and that frequently no one pursues this source. Assemblyman Anderson questioned at what point an investigation ends. Responding, Mr. Pescetta said the investigation never ceases. He explained that confessions may be false or misleading, and the prosecutor's disclosure obligation relative to evidence is continuous. Assemblyman Anderson asked for further clarification on the role of the prosecution in relation to discovery and disclosure. Chairwoman Leslie asked that further discussion on discovery be postponed to a future meeting.

Concluding his remarks, Mr. Pescetta explained that under the law, the prosecutor's office is charged with knowledge of everything in the police department files, regardless of whether the individual the attorney who is prosecuting the case is aware of such information. Further, the prosecutor is responsible for disclosing any and all information that is in the possession of the prosecution agencies.

Daniel J. Greco

Daniel J. Greco, previously identified on page 16 of these minutes, addressed Assemblyman Oceguera's inquiry regarding the murder of Jennette Wren Testa, the daughter of Kathleen Testa Smith. Mr. Greco reported that he became involved in the proceeding after the prosecutor initially assigned to the case ended his employment with the Washoe County District Attorney's Office. His involvement in the proceeding began after the deadline for charging the case as a capital offense had passed.

Continuing, Mr. Greco explained that Ms. Testa was murdered and later moved to another location in south Reno. The murderer then poured gasoline over her body and she was burned. He noted that because the burning of Ms. Testa's body occurred post-mortem, the mutilation aggravator was not applicable. Kidnapping, however, was an aggravator. Mitigators in the case included the fact that the offender was 21 years of age and had no prior criminal history other than a drug charge that had not yet been adjudicated. In addition, the offender had a documented history of certain mental health issues.

Referencing Mr. Kohn's remarks regarding the order of closing arguments in capital punishment cases, Mr. Greco stated that prosecutors are allowed to present their arguments first and last because the state has the burden of proof. He noted that this rule has been debated in a variety of contexts, and courts have repeatedly held that because the state has the burden of proof, it should make its closing argument after the defense. Continuing, Mr. Greco disagreed with Mr. Kohn's contention that the defense has the burden of proof during the penalty phase of a capital case. He asserted that the state must prove the aggravating circumstances beyond a reasonable doubt, and if it fails to do so, the death penalty cannot be imposed against a defendant.

Mr. Greco explained that case law precedent, NRS Chapter 175, and S.C.R. 250 govern procedures in Nevada capital cases. In general, the trial of a capital case is similar to that of a

noncapital proceeding. A number of extra protections are afforded in capital cases to ensure that the defendant receives a fair trial. These extra protections include the following:

1. Two capital-qualified attorneys are appointed to represent the defendant.

2. Both the defense and the prosecution are permitted eight preemptory challenges rather than the usual four that are allowed in nonmurder proceedings.

3. Daily transcripts of the proceedings are provided to both the defense and prosecution to prevent misstatement of the evidence. In most criminal proceedings, these transcripts are usually not available until months after the trial concludes.

4. The Nevada Supreme Court and federal appellate courts carefully scrutinize all capital cases.

Continuing, Mr. Greco stated that to his knowledge, no person convicted of a capital offense in Washoe County has been later found to be innocent.

Senator Neal asked Mr. Greco to clarify the time limitation for seeking the death penalty in the Jennette Wren Testa case. Responding, Mr. Greco explained that once the original prosecutor charged the case, it was sent to district court. After the case had been in district court for about three months, the charging prosecutor ended his employment with the Washoe County District Attorney's Office. Thereafter, the proceeding was assigned to Mr. Greco. He noted that the defendant ultimately pled guilty to the charges of first-degree kidnapping and first-degree murder. The judge imposed the maximum sentence, LWOP on the charge of murder and life with parole on the kidnapping offense, to be served consecutive to one another.

Continuing, Mr. Greco explained that the applicable rule governing potential capital offense cases requires that if the prosecutor plans to seek the death penalty, he or she must first prepare a formal document providing notice of intent to seek the death penalty no later than 30 days after the filing of the indictment or information in district court. He noted in the case under discussion, a notice of intent was not filed before the deadline passed, so presentation of capital punishment as a sentencing option was not available. Mr. Greco observed that based on his experience—and given the lack of many aggravators and the presence of mitigators in this case—it is unlikely the prosecution would have sought the death penalty.

Senator McGinness observed that defendant in the Jennette Wren Testa case will receive parole consideration hearings even though he was sentenced to LWOP on the first-degree murder charge, and he questioned the efficacy of such proceedings. Mr. Greco acknowledged the superficiality of parole hearings in this particular case. Continuing, he explained that the defendant must complete the sentence for the offense that occurred first in time before serving time for crimes committed at a later date. In the case under discussion, the defendant would first serve the sentence imposed on the drug charge. The defendant would then begin serving the first-degree kidnapping sentence and after five years would be eligible for parole on that conviction. If, for instance, the defendant was paroled after serving seven years on the kidnapping charge, he would then begin serving the sentence for the first-degree murder conviction. Mr. Greco noted that the order in which the offenses were listed in the charging document—kidnapping first and then murder—and the earlier drug offense, dictate the sequence in which the defendant must complete his sentences.

Continuing, Senator McGinness questioned the efficacy of holding parole hearings when the defendant must ultimately serve a sentence of LWOP and will never be released from prison. He expressed concern that this process results in victims and their families receiving notices of parole hearings. Senator McGinness pointed out that the victims and their families then become concerned that the defendant may be released from prison.

Assemblyman Anderson reported that during the 2001 Legislative Session, legislation was passed that requires the longest of the sentences to be served first. He also shared his personal experience regarding the negative impact of parole notices on the families of murder victims.

PUBLIC TESTIMONY

Maizie W. Pusich

Maizie W. Pusich, previously identified on page 15 of these minutes, appearing on her own behalf, submitted written

testimony (Exhibit O), and made a brief statement of her opposition to the death penalty. Ms. Pusich stressed the importance of all parties respecting the views of others.

V. Robert Payant

V. Robert Payant, Executive Director, Nevada Catholic Conference, Diocese of Las Vegas and Diocese of Reno, of Reno, read portions of a prepared statement expressing opposition to the death penalty (Exhibit P). He asserted that if LWOP is an option and victims and survivors are confident that the offender will never be released from prison, closure is much easier.

Chairwoman Leslie observed that her experience in discussing this issue is that many Nevadans are unaware of the fact that a person who is sentenced to LWOP in Nevada will remain incarcerated for the remainder of his or her life. Further, once people recognize that this sentence precludes release of the inmate, many of them change or modify their opinions regarding capital punishment. Chairwoman Leslie commented that educating the public regarding these issues will require a great deal of effort.

Reverend Ron M. Rentner

The Reverend Ron M. Rentner, a Lutheran minister of Sparks, Nevada, and board member of the Religious Alliance in Nevada (RAIN), read a prepared statement expressing views in opposition to the death penalty (Exhibit Q). He cautioned against making public policy based on the concept of providing closure to victims and their families.

Charles Laws

Charles Laws, a concerned citizen of Reno, read a prepared statement expressing his opposition to the death penalty (Exhibit R). It is Mr. Laws' opinion that the death penalty encourages violence, killing offenders contributes to social faults rather than correcting them, and humans are differentiated from other animals only when they stop killing their own kind. He asked that the death penalty be eliminated in Nevada.

Chairwoman Leslie announced the subcommittee's fourth meeting will be held in Las Vegas and videoconferenced to Carson City on March 18, 2002, and the subcommittee will be addressing the topic of DNA evidence.

ADJOURNMENT

There being no further business, the meeting was adjourned at 4:40 p.m.

Exhibit S 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 packet of information provided by James S. Liebman, Simon F. Rifkind Professor of Law, Columbia University School of Law, New York, New York, which consists of the following documents:

- Biographical information regarding Professor Liebman;
- Executive Summary from the report *A Broken System: Error Rates in Capital Cases, 1973-1995*; and
- Excerpts from the report *A Broken System, Part II: Why There Is So Much Error in Capital Cases, and What Can Be Done About It*.

Exhibit B is an electronic mail message to members of the Subcommittee to Study the Death Penalty and Related DNA Testing from Nancy Hart, State Death Penalty Abolition Coordinators, Amnesty International, and Acting Chair, Nevada Coalition Against the Death Penalty, Reno, Nevada, together with a list of frequently asked questions regarding the study conducted by Professor James S. Liebman, Simon F. Rifkind Professor of Law, Columbia School of Law, and his colleagues, which culminated in the report *A Broken System, Part II: Why There Is So Much Error in Capital Cases, and What Can Be Done About It*.

Exhibit C is a document titled "Federal Decisions Reviewing Nevada Cases" provided by Michael Pescetta, Las Vegas, Nevada. The document was provided by Mr. Pescetta as an individual and not in his capacity as Assistant Federal Public Defender, Office of the Federal Public Defender, District of Nevada.

Exhibit D consists of the following materials pertaining to three-judge review panels:

- A document titled "Nevada Supreme Court Clerk's Office, Selection of 3-Judge Panels in Capital Cases";
- "Assignments of Three-Judge Panels in Death Cases, Updated: September 19, 2001"; and
- Various Supreme Court Orders impaneling three-judge panels to conduct penalty hearings in capital punishment proceedings.

These materials were provided by the Honorable Robert E. Rose, Associate Justice, Nevada Supreme Court, Carson City, Nevada.

Exhibit E is an untitled chart and list regarding three-judge panels provided by Maizie W. Pusich, Chief Deputy Public Defender, Washoe County Public Defender's Office, Reno, Nevada.

Exhibit F is a memorandum dated February 20, 2002, from Michael Pescetta, Las Vegas, Nevada, to the Legislative Commission's Subcommittee to Study the Death Penalty and Related DNA testing. These materials were provided by Mr. Pescetta as an individual and not in his capacity as Assistant Federal Public Defender, Office of the Federal Public Defender, District of Nevada.

Exhibit G is a memorandum dated February 19, 2002, to the Legislative Commission's Subcommittee to Study the Death Penalty and Related DNA Testing, from JoNell Thomas, private attorney and representative, Nevada Attorneys for Criminal Justice and the American Civil Liberties Union of Nevada, Las Vegas, Nevada, regarding three-judge panels in capital cases, provided by Ms. Thomas.

Exhibit H is a prepared statement titled "Remarks on Victims of Crime," read into the record by Assemblyman Bernie Anderson, Sparks, Nevada, and its supporting documentation, provided by Mr. Anderson.

Exhibit I is a document titled "Remembering the Victim: A Report on the Demographic and Social Effects of Crime

on Victims" dated February 21, 2002, provided Victor-Hugo Schulze II, Deputy Attorney General, Office of the Attorney General, Las Vegas, Nevada.

Exhibit J is a prepared statement dated February 21, 2002, to the Legislative Commission's Subcommittee to Study the Death Penalty and Related DNA Testing, from Sandi Viau, Las Vegas, Nevada, provided by Ms. Viau and read into the record by Sandy Sharp, Las Vegas, Nevada.

Exhibit K is a prepared statement dated February 21, 2002, read into the record by Kathleen Testa Smith, together with a copy of a handwritten note of murder victim Jennette Wren Testa, provided by Ms. Smith, Reno, Nevada.

Exhibit L is the prepared statement of Mervin Liebscher, Reno, Nevada, provided by Mr. Liebscher without testimony and submitted for the record by Nicolas C. Anthony, Senior Research Analyst, Research Division, Legislative Counsel Bureau, Carson City, Nevada.

Exhibit M is the background statement of Bud Welch, Board Member, Murder Victims' Families for Reconciliation, Oklahoma City, Oklahoma, provided by Mr. Welch.

Exhibit N is a document titled "Recommended Legislation" provided by Philip J. Kohn, Las Vegas, Nevada. The document was provided by Mr. Kohn as an individual and not in his capacity as Clark County's Special Public Defender.

Exhibit O is a memorandum dated February 20, 2002, to the Legislative Commission's Subcommittee Studying the Death Penalty and Related DNA Testing, from Maizie W. Pusich, Chief Deputy Public Defender, Washoe County Public Defender's Office, Reno, Nevada, provided by Ms. Pusich.

Exhibit P is the prepared statement of V. Robert Payant, Executive Director, Nevada Catholic Conference, Diocese of Las Vegas and Diocese of Reno, Reno, Nevada, provided by Mr. Payant.

Exhibit Q is a prepared statement dated February 21, 2002, read into the record by The Reverend Ron Rentner, a Lutheran minister of Sparks, Nevada, and Board Member, Religious Alliance in Nevada, provided by Rev. Rentner.

Exhibit R is a prepared statement dated February 21, 2002, to the Legislative Commission's Subcommittee to Study the Death Penalty and Related DNA Testing, from Charles Laws, a concerned citizen, Reno, Nevada, provided by Mr. Laws.

Exhibit S 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 Library at (775) 684-6827.