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*])
April 18, 2002
Las Vegas, Nevada

The fifth 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 April 18, 2002, commencing at 9:40 a.m. The meeting was held in Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada, and videoconferenced to Room 4100 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. Pages 2 through 4 contain the "Meeting Notice and Agenda."

SUBCOMMITTEE MEMBERS PRESENT IN LAS VEGAS:

Assemblywoman Sheila Leslie, Chairwoman
Senator Mark A. James
Senator Mike McGinness
Senator Joseph M. Neal Jr.
Senator Maurice E. Washington
Assemblyman Bernie Anderson
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, April 18, 2002 9:30 a.m.

Place of Meeting: Grant Sawyer State Office Building
Room 4401
555 East Washington Avenue
Las Vegas, 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:

Legislative Building
Room 4100
401 South Carson Street
Carson City, 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 February 21, 2002, Meeting

*III. Presentation on the Imposition of the Death Sentence on Persons Who Are Mentally Retarded

Brian Lahren, Ph.D., Executive Director, Washoe Association for Retarded Citizens
David Ward, Board Member, Washoe Association for Retarded Citizens
W. Larry Williams, Ph.D., Associate Professor, Behavior Analysis Program, University of Nevada, Reno

*III. Presentation on the Imposition of the Death Sentence on Persons Who Are Mentally Retarded (Continued)

Richard L. Siegel, Ph.D., Professor of Political Science, University of Nevada, Reno, and President of the American Civil Liberties Union-Nevada
Michael Pescetta, Assistant Federal Public Defender, Office of the Federal Public Defender, District of Nevada
Richard Gammick, District Attorney, Office of the Washoe County District Attorney
Ben Graham, Chief Deputy District Attorney, Office of the Clark County District Attorney
Chris Laurent, Chief Deputy District Attorney, Office of the Clark County District Attorney

*IV. Presentation on the Imposition of the Death Sentence on Persons Under the Age of 18 at the Time of the Offense

Mark Blaskey, Chief Deputy Public Defender, Clark County Public Defender's Office
Mary E. Berkheiser, Associate Professor of Law, Boyd School of Law, University of Nevada, Las Vegas
Richard Gammick, District Attorney, Office of the Washoe County District Attorney
Ben Graham, Chief Deputy District Attorney, Office of the Clark County District Attorney
Chris Laurent, Chief Deputy District Attorney, Office of the Clark County District Attorney

*V. Presentation on the Discovery Process in Capital Cases

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
Richard Gammick, District Attorney, Office of the Washoe County District Attorney
Daniel J. Greco, Chief Deputy District Attorney, Office of the Washoe County District Attorney
Ben Graham, Chief Deputy District Attorney, Office of the Clark County District Attorney
Chris Laurent, Chief Deputy District Attorney, Office of the Clark County District Attorney

*VI. Presentation on the Costs Associated With the Death Penalty

Richard C. Dieter, Executive Director, Death Penalty Information Center
Richard Gammick, District Attorney, Office of the Washoe County District Attorney
Ben Graham, Chief Deputy District Attorney, Office of the Clark County District Attorney
Chris Laurent, Chief Deputy District Attorney, Office of the Clark County District Attorney

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

Chairwoman Leslie called the meeting to order. In her opening remarks, Chairwoman Leslie noted that the subcommittee would be hearing testimony regarding a number of issues relative to the death penalty, including the cost of this system, discovery, and application of capital punishment to juveniles and persons afflicted with mental retardation. She pointed out that The Constitution Project recommends:

> To ensure that the death penalty is reserved for the most culpable offenders and to effectuate the deterrent and retributive purposes of the death penalty, persons with mental retardation and persons under the age of 18 at the time of the crime should not be eligible for the death penalty.

PRESENTATION ON THE IMPOSITION OF THE DEATH SENTENCE ON PERSONS WHO ARE MENTALLY RETARDED

Brian Lahren, Ph.D.

Brian Lahren, Ph.D., Executive Director, Washoe Association for Retarded Citizens, Reno, Nevada, advocated exempting from the death penalty those individuals with significantly subaverage intelligence. Speaking from a prepared statement (Exhibit A), he offered three reasons in support of his position as follows:

1. Mental retardation compromises legal defense—People with mental retardation have a permanent disability that impairs their understanding. They form simple, limited notions of what is expected of them, including pleasing those around them, and are typically followers rather than leaders.

2. People with retardation try to mask their disability—A person with mental retardation exerts maximum effort to appear and sound normal to those around them, thus preventing those who are judging them from being able to do so accurately. Professional judgment is necessary to assess competence related to mental retardation.

3. Determining mental retardation—It is not difficult for professionals to ascertain who is mentally retarded. While an individual may be able to fake a low score on a single test, mentally retarded persons cannot falsely achieve a higher intelligence quotient (IQ) than they possess. Those with an IQ lower than 70 will also have a record of special education services and poor academic and social performance. Both the federal government and the state rely on this type of evaluation in determining who is eligible for life-long taxpayer support. Nevada recognizes this level of disability as constituting serious impairment. Likewise, it can be argued logically that that these individuals also do not meet the legal standards for culpability that apply to persons of normal intelligence.

On behalf of the Washoe Association for Retarded Citizens, Dr. Lahren urged the subcommittee to recommend the elimination of the death penalty for those who are afflicted with mental retardation. Dr. Lahren reported that in four recent surveys, over 70 percent of Americans opposed the execution of persons with significant mental retardation. In conclusion, he asserted that a decision to amend Nevada's practice in this regard is not politically dangerous; rather, it is a humane and well-informed act.

Chairwoman Leslie asked for a brief description of the difference between mental retardation and mental illness. Dr. Lahren prefaced his remarks by noting that he is not a licensed clinical psychologist. However, he formerly served as director of the Division of Mental Health and Developmental Services, Nevada's Department of Human Resources. Dr. Lahren explained that mental retardation involves difficulty with basic intellectual functioning. A person who is mentally retarded lacks the basic resources necessary to grasp the complexities of society. At the time of conception, certain factors cause changes in the structure of the brain or the method in which brain chemistry functions, resulting in mental retardation. For instance, an assault upon a developing fetus from environmental pollutants can result in various developmental problems related to cell formation. As a result, the brain's ability to process information is compromised, making it difficult for the affected individual to learn.

Continuing, Dr. Lahren reported that individuals with mental illness are typically of average or above-average intelligence. In the most severe kinds of mental illness, the brain does not properly process chemicals, causing a person to be episodically or persistently disengaged from reality. The mentally ill typically have delusions and hallucinate; they may see or hear things that are not present. Mentally retarded persons usually do not experience these problems. Dr. Lahren commented that a substantial portion of those who are mentally ill could be helped through proper medication and treatment. In contrast, it is not possible to change the condition and the inherent limitations of individuals with mental retardation.

Chairwoman Leslie asked what criteria a mentally retarded person must meet to receive social services. Dr. Lahren noted that Chapter 435 of *Nevada Revised Statutes* (NRS), "Retarded Persons," addresses significant subaverage intelligence. If mental retardation were determined solely on a person's IQ, then those individuals with a score below 70 would be considered mentally retarded. However, professionals consider not only IQ, but also the person's overall functioning and history of disability over the course of his or her lifetime. The IQ test provides a sense of an individual's ranking in relation to other people relative to basic cognitive tasks. Dr. Lahren explained that the assessments of professionals concern the way in which mental retardation compromises an individual's ability to appropriately perform a variety of life skills such as dressing, feeding, and managing money.

David Ward

David Ward, Board Member, Washoe Association for Retarded Citizens; Vice Chair, Nevada's Commission for Mental Health and Developmental Services; and the father of Ryan Ward, his 19-year-old, mentally-retarded son, of Reno, shared his views regarding application of the death penalty to mentally retarded persons. He prefaced his remarks by noting that he was appearing in his capacity as a private citizen representing families of people with developmental disabilities and not in his capacity as Vice Chairman of the Commission for Mental Health and Developmental Services. Mr. Ward read a prepared statement into the record (Exhibit B), covering the following points:

- He does not oppose capital punishment nor does he consider mental retardation an excuse to commit murder or

any other crime. In his view, mental retardation should not free a person from the consequences of his or her actions.

- However, persons afflicted with mental retardation cannot fully comprehend the consequences of their actions. Accordingly, without understanding the gravity of a crime, they are less culpable than a person who is not developmentally disabled.

- Capital punishment should be reserved for the most culpable offenders, not for those who cannot fully understand the gravity of their crimes.

- Justice is not always dispensed equally. Those defendants who have the resources to retain the most effective counsel are rarely sentenced to death.

- Because of their limited abilities, mentally retarded persons usually lack the funds to hire the best attorneys and may be challenged to offer adequate assistance in their own defense. Consequently, they are more likely to be wrongly convicted or to receive a harsher penalty if found guilty.

Concluding his remarks, Mr. Ward urged the subcommittee to take the action necessary to ensure that a person with the mind of a child is not subjected to a sentence designed for an adult.

W. Larry Williams

W. Larry Williams, Ph.D., Associate Professor, Behavior Analysis Program, University of Nevada, Reno (UNR), Reno, indicated he has over 33 years' experience in the field of mental retardation. Mr. Williams read from a prepared statement (Exhibit C), noting when discussing use of the death penalty for persons who are mentally retarded, there are two central issues for consideration:

1. What is a person with mental retardation and why are they different from those without mental retardation? A mentally retarded person may exhibit the following characteristics:

   (a) Inability to respond simultaneously to auditory and visual stimuli;

   (b) Lack of communication or social ability;

   (c) An obvious deviation from the norm in terms of ability to perform abstract reasoning, follow rules, function independently, and conduct oneself in a socially responsible manner; and

   (d) Demonstrate concepts of right and wrong similar to those of young children.

2. Is it possible to make an accurate determination of those who have mental retardation from those who do not?

   (a) Deficiencies are detectable and measurable; and

   (b) A diagnosis of mental retardation requires three conditions:

      i. Mental retardation is determined in part by the reliable application of highly researched and developed task sequences by a qualified psychometrician, usually a psychologist, trained at the graduate level in the use of such tests and their validity and reliability. Such testing would need to produce a score that is reliably below 70 on a test where the norm would be 100 or above.

      ii. A second component of the process would determine whether the person demonstrates significantly subnormal functioning in at least two of ten specific areas or domains in adaptive behavior skills, namely, communication, community use, functional academics, health and safety, home living, leisure, self-care, self-direction, social skills, and work.

      iii. In addition, the person must have demonstrated subnormal intellectual functioning and significantly

subnormal adaptive behavior functions before the age of 18. Professor Williams asserted it would not be possible for a person with no history or evidence of any subnormal functioning before the age of 18 to consistently fake mental retardation.

Continuing, Professor Williams directed the subcommittee's attention to a diagram in Exhibit C that illustrates the normal distribution of IQs. He explained that persons afflicted with mental retardation are different from other people. Professor Williams' argued that mentally retarded persons should be exempt from the death penalty as are young people.

Based on Professor Williams' definition of mental retardation, Assemblyman Nolan asked if it is possible for a mentally retarded person to understand that taking a life is wrong and that the consequences for such an act are severe, e.g., that they may lose their own life. Professor Williams explained that in his experience, mentally retarded persons do not comprehend causality in time and thus responsibility. Those mentally retarded who are violent do not understand that an attack such as hitting a person over the head with a chair may harm the individual; their goal is simply to make the person leave. Remorse may appear later without understanding why the other person was hurt.

Continuing, Assemblyman Nolan asked if it is possible for an individual with an IQ of 68 or 69 to understand that killing is wrong and may have consequences. Further, Mr. Nolan asked if such a person could knowingly commit an act with intent. Dr. Williams replied that is a crucial issue. He said legislation should not stipulate that the determining factor is an IQ below 70; rather, it should specify a person with a diagnosis of mental retardation. He explained that it would be possible for a person to score low on a standard IQ test one time and not demonstrate significant subnormal adaptive behavior. Such a person would not be diagnosed as mentally retarded and could possibly comprehend the responsibility and causality of the crime.

Given the standards outlined by Professor Williams, Senator Neal questioned why a mentally retarded individual would surmise that hitting a person over the head with a chair would make him leave. Professor Williams commented that all vertebrates possess this instinct. For example, lower organisms bark, growl, or push at the object of their displeasure. People lash out in different ways. When upset, many mentally retarded persons may approach people with the intent to assault them but instead bite or hit themselves. He noted that the mentally retarded are not skilled aggressors.

Senator James asked if fine distinctions could lead to subjective determinations of whether a person is mentally retarded. He questioned whether it is possible to make a fair, legal distinction based upon existing scientific analysis of a person's mental ability. In short, Professor Williams replied yes. He explained that a similar problem is encountered when determining the age at which a child becomes an adult. Many adults act like children while some children fully comprehend an adult type of responsibility. For this reason, using the IQ test alone is inappropriate. He stated that a comprehensive assessment must be conducted, taking into account a full history. A professional evaluation can reliably determine if a person is competent or is mentally retarded. Professor Williams reported that statistics illustrate that only 2.3 percent of the population have IQs below 70, but not all of these individuals are diagnosed as being mentally retarded. The doctors working in this field can easily make a determination of mental retardation.

Continuing, Senator James argued that if the standards for determining whether a person is mentally retarded were applied to children under the age of 18, then children who have high IQs and are emotionally mature should be subject to the death penalty if they commit a capital crime. Professor Williams clarified that his testimony pertained solely to application of the death penalty to the mentally retarded. He asserted that persons afflicted with mental retardation should not be subject to the death penalty. Further, he reiterated that a diagnosis of mental retardation as outlined earlier in his testimony must be met before a person could be exempted from capital punishment. Senator James argued that the issues of age and IQ cannot be considered separately. He pointed out that if Professor Williams' recommendations were enacted into law, it would be possible to apply the death penalty to a person with a low IQ who was not diagnosed with mental retardation while an individual below the age of 18 who possessed greater emotional and intellectual abilities would be exempt from capital punishment.

Richard L. Siegel

Richard L. Siegel, Ph.D., Professor of Political Science, UNR, and President of the American Civil Liberties Union of Nevada, Reno, provided the subcommittee with the following materials:

- "Death Penalty Attitudes" dated July 2000, prepared by the Behavior Research Center of Phoenix, Arizona, for The Coalition of Arizonans to Abolish the Death Penalty (Exhibit D); and

- A memorandum dated April 15, 2002, from Professor Siegel to the Subcommittee to Study the Death Penalty and Related DNA Testing together with a copy of a portion of the April 2002 Illinois Commission on Capital Punishment report titled "Report of the Governor's Commission on Capital Punishment" (Exhibit E).

Professor Siegel indicated he is currently on sabbatical at New York University Law School, where he is lecturing and performing research on the death penalty. This opportunity has provided him with insight for his testimony. He spoke on the legal and political aspects of imposing capital punishment on mentally retarded persons from both domestic and international perspectives. Referencing Exhibit D, Professor Siegel noted that a significant portion of Arizonans surveyed opposed the execution of mentally retarded persons.

Continuing, Professor Siegel discussed Recommendation 68 contained in the Illinois Commission on Capital Punishment's report (Exhibit E). He pointed out that the Illinois Commission recommended that the State of Illinois enact a statute prohibiting imposition of the death penalty for mentally retarded defendants. Further, the report recommended that Illinois utilize the definition of "mental retardation" as specified by the Tennessee General Assembly in Tennessee Code 39-13-203(a), which states:

> (a) As used in this section, "mental retardation" means:
> (1) Significantly subaverage general intellectual functioning as evidenced by a functional intelligence quotient (I.Q.) of seventy (70) or below;
> (2) Deficits in adaptive behavior; and
> (3) The mental retardation must have been manifested during the developmental period or by eighteen (18) years of age.

Speaking on international law and opinion regarding the death penalty, Professor Siegel reported that there is not full consensus on abolition of the death penalty. However, there is well-established consensus in international law relating to the death penalty on the following three issues:

1. Pregnant women may not be executed;

2. Juveniles below the age of 18 should not be executed; and

3. Mentally retarded persons must not be executed.

He noted that the United States (U.S.) is a party to the United Nations' International Covenant on Civil and Political Rights, which explicitly addresses the execution of juveniles, pregnant women, and—through interpretation by the Human Rights Committee—the mentally retarded. Professor Siegel reported that Canada, Mexico, and most European countries do not practice capital punishment. These countries will not extradite to the U.S. any person who is wanted for a capital crime on the ground that the suspect, if found guilty, might be executed. Continuing, Professor Siegel pointed out that Las Vegas' economy is largely dependent upon public opinion, and countries that do not support capital punishment are major sources of such attitudes.

Concluding his remarks on this topic, Professor Siegel stated that in his view, execution of the mentally retarded is immoral, unjustified, and wrong, and such practice is not supported by international law or by public opinion in the United States and the world.

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. Mr. Pescetta provided the subcommittee with the following documents:

1. A copy of a Human Rights Watch publication dated March 2001 titled "Beyond Reason: The Death Penalty and

Offenders With Mental Retardation" (Exhibit F); and

2. His memorandum dated April 15, 2002, to the subcommittee recommending that persons with mental retardation be excluded from eligibility for the death penalty (Exhibit G).

Mr. Pescetta proposed that the ultimate penalty for individuals afflicted with mental retardation should be life imprisonment with or without the possibility of parole or imprisonment for a term of years. In support of his view, he offered the following remarks:

- Mental retardation is a separate issue from a person's sanity or competence.

- If a person was not able to recognize the difference between right and wrong or to understand the nature and quality of the act, he or she would qualify as being insane under the law, which results in civil commitment. A person who is determined to be insane cannot be found to be criminally culpable.

- In a similar manner, an incompetent person would be unable to understand the nature of the charges against him and would be unable to cooperate with defense counsel. This individual could be civilly committed but could not be held criminally culpable at a trial unless he later became competent.

- Citing mental retardation as a mitigating factor in capital cases has proven ineffective because the condition often is not recognized. He has identified three death row inmates whose IQs are within the retarded range. It is his understanding that two of the inmates are afflicted with mental retardation and the third suffers from acquired brain injury. Two of these inmates were tried without anyone recognizing and presenting evidence of retardation. In addition, one of the inmates was in the Nevada prison system for 14 years before someone obtained his earlier records and learned that he had been diagnosed as suffering from mental retardation as early as 13 years of age. During the penalty phase of the third inmate's trial, uncontradicted expert testimony was presented regarding the defendant's retardation. A three-judge panel refused to find the defendant's retardation as a mitigating factor and imposed the death penalty.

- During the last session of the Legislature, questions were raised regarding the reliability of testing for mental retardation. Nevada statute authorizes expending funds for services to people who suffer from mental retardation based on the definition contained in NRS 433.174, "Mental retardation defined." A diagnosis of mental retardation based on this definition should be adopted as a basis for exclusion from eligibility for capital punishment.

Concluding his remarks, Mr. Pescetta urged the subcommittee to recommend that mentally retarded persons be excluded from eligibility for capital punishment.

Assemblyman Anderson asked whether an accident resulting in a traumatic brain injury or the excessive use of drugs could cause a murder defendant's IQ to decrease to a score of 70 or below. Mr. Pescetta asserted that traumatic brain injury should be considered separate from mental retardation. He noted that low IQ might be present in people with conditions other than mental retardation. For this reason, it is important that a diagnosis of mental retardation not be based solely on a person's IQ score.

Referencing Mr. Pescetta's testimony regarding the three death row inmates who have been identified as suffering from mental retardation or traumatic brain injury, Assemblyman Nolan expressed concern that their conditions had been unrecognized or ignored and that they had received death sentences. He observed that the subcommittee sometimes receives subjective information from a witness who has strong convictions, but it must weigh both sides of the issue. Assemblyman Nolan expressed an interest in hearing a response to Mr. Pescetta's relation of the facts in these cases.

Mr. Pescetta commented on the Thomas Nevius case currently pending before the State Board of Pardons Commissioners. Nancy Hart, State Death Penalty Abolition Coordinator of Amnesty International and Acting Chairwoman of the Nevada Coalition Against the Death Penalty, Reno, provided the subcommittee with copies of two newspaper editorials concerning Mr. Nevius (Exhibit H).

Assemblyman Nolan asked at what point during the investigation and prosecution of a case a determination is made as to whether a person understands what he or she did was wrong and the consequences for the act. Responding, Mr. Pescetta covered the following points:

- Mentally retarded individuals do not appreciate what actions are in their best interests in the same way as a normal person. For instance, mentally retarded persons will sometimes make false confessions to please the interrogator.

- Unless someone considers the possibility that the defendant might be mentally retarded, the condition is frequently missed.

- Mentally retarded persons are followers and typically do not commit offenses alone. When a mentally retarded person participates in a crime with others, he is too unsophisticated to realize that it is in his interest to place responsibility for the act on another individual.

- Furthermore, mental retardation may not be identified during the investigation of an offense if the person's appointed counsel does not recognize the condition. Throughout the process, the masking effect subverts the ability of the criminal justice system to handle the merits of the case properly.

- In his view, persons afflicted with mental retardation who commit capital crimes should be exempted from eligibility for capital punishment rather than leaving the decision to the prosecutor, judge, or jury.

Senator Neal observed that mental capabilities of the defendant often become an adversarial matter that must to be determined by a judge or jury. He questioned how the state could correct an error if one is committed. Mr. Pescetta said under Assembly Bill 353 of the 2001 Legislative Session, which proposed to "prohibit the sentence of death for person who is mentally retarded," either party would have the right to appeal a decision from an adversarial proceeding in which retardation was determined and the death penalty was excluded as a sentencing option. Senator Neal asked what action might prevent errors from occurring in cases involving individuals who do not understand the difference between right and wrong. Mr. Pescetta replied that for those who do not understand right from wrong at all or are incompetent to proceed, current statute provides for determinations of competence before trial and for insanity pleas at the time of trial. He said A.B. 353 proposed that a determination be made as to whether a person was mentally retarded prior to trial. If the defendant was found to suffer from mental retardation, the death penalty would be excluded as a sentencing option. For those inmates already convicted and who have filed post-conviction habeas petitions or who are involved in federal proceedings, the only recourse would be to raise the issue to demonstrate ineffective assistance of counsel or judicial error for failure to consider retardation as a mitigating factor. In addition, the State Board of Pardons Commissioners could determine whether the impairment was sufficiently severe to justify clemency. Mr. Pescetta stressed the importance of addressing the question of retardation prior to trial, which was the purpose of A.B. 353.

Referring to comments made by Senator James, Senator Neal surmised it would be difficult to impose limitations in terms of psychological measurement. Mr. Pescetta said the criteria for exemption would be the diagnosis of mental retardation as defined in statute. Senator Neal observed that such a diagnosis would still be subject to adversarial consideration. Mr. Pescetta agreed, noting that this is the procedure currently employed for involuntary commitment of an individual with retardation.

Richard Gammick

Richard Gammick, Washoe County District Attorney, Reno, was joined at the witness table by Daniel J. Greco, Chief Deputy District Attorney, Office of the Washoe County District Attorney, Reno. Mr. Gammick discussed imposition of the death penalty on mentally retarded persons and commented on testimony offered by previous witnesses, covering the following points:

- Few mentally retarded people commit crimes, much less first-degree murder. The subcommittee's consideration of the mentally retarded pertains solely to persons who: (1) have been shown to be competent and sane; (2) recognize the difference between right from wrong and did not enter a plea of not guilty by reason of insanity;

and (3) understand the nature of the charges and are able to assist their counsel.

- If a mentally retarded person is a follower and was not directly involved in the murder, the U.S. Supreme Court has stipulated that a higher standard must be met before the death penalty can be sought.

- Mitigators are offered at the time the case is presented to a jury or a three-judge panel for sentencing. With respect to Mr. Pescetta's testimony regarding a three-judge panel's rejection of mental retardation as a mitigator, such action was within the panel's authority. Juries have a similar right under law to make such a decision.

- Safeguards such as post-conviction relief have been established to ensure integrity of the system.

Concluding his remarks, Mr. Gammick asserted that eliminating capital punishment as a potential sentencing option on the basis that an offender is mentally retarded presents an unnecessary obstacle in the criminal justice system and would delay the process. Referencing the remarks of previous witnesses, he averred that no meaningful standard for mental retardation exists, e.g., a person with an IQ of 70 is not necessarily mentally retarded. Mr. Gammick argued that a diagnosis of mental retardation is a subjective decision that would be open to debate, and expert witnesses are usually available to advocate either position. He pointed out that safeguards such as post-conviction relief have been established to ensure that a person who does not understand the nature of the charges, is unable to assist his or her attorney, and does not know the difference between right and wrong is not executed. The State Board of Pardons Commissioners also offers a safeguard.

Assemblyman Anderson asked Mr. Gammick if he had ever sought the death penalty against a defendant, knowing that the person was excluded from the possibility of receiving a capital sentence. Mr. Gammick explained that only experienced litigators, appellate attorneys, and case agents are assigned to capital cases. If a law exists or a court decision has been rendered which clearly indicates that the death penalty is not appropriate under certain circumstances, then capital punishment is not sought. If the case involves an issue that has not yet been settled and optional approaches are available, the death penalty may be sought, depending on the defendant's acts and the egregiousness of the offense.

Mr. Anderson observed that the subcommittee ultimately must decide whether to recommend that the Legislature clearly define in statute when the death penalty may be sought. Mr. Gammick indicated that he would not seek the execution of a person who did not understand the difference between right and wrong and asserted that current statute defines the circumstances under which the death penalty may be sought. He noted that while it is not always clear when the death penalty may be sought, the current process involves decision making by trained judges and by laypersons in the form of juries that must be unanimous in their decisions.

Senator Neal noted that subjective decisions lead to the possibility of errors, even with safeguards in the system. He questioned how individuals on death row could be innocent. Mr. Gammick said humans make mistakes even though every effort is made to ensure and safeguard that errors do not occur. There are over 3,000 inmates on death row in the United States today. Seldom is an inmate found to be innocent, which demonstrates that the criminal justice system is working effectively.

Continuing, Senator Neal said prosecutors decide which sentences are sought for capital crimes. He questioned whether this decision-making process should be studied. Mr. Gammick noted that prosecutors are scrutinized continually. Senator Neal asked if prosecutors are motivated by winning rather than seeking justice. Mr. Gammick replied that within his office, prosecutors seek justice. He invited Senator Neal to visit his office and review the procedures. He agreed there is always a motivation to win but not at all costs; ethics and the law are not compromised. Senator Neal asked whether prosecutorial decisions are guided by justice rather than a desire to win a case that might affect a future election. Mr. Gammick said he was not concerned with being reelected, but rather with making appropriate decisions.

Assemblyman Nolan queried, when dealing with a case where an individual's mental capacity is in question and his or her own testimony may need to be excluded, what standard is used to determine whether that person comprehends right from wrong. Mr. Gammick said if prosecutors observe an instance where it is obvious that the defendant has mental defects, it is brought to the attention of either the court or the defense counsel. The defense spends thousands of hours with their clients discussing their cases. If a problem is identified by the defense, they should either request

a competency evaluation or plead not guilty by reason of insanity, which can be done at any time up to the beginning of the trial.

Continuing, Assemblyman Nolan asked, when the defense demonstrates its client has mental deficiencies, what standards are used or questions asked to determine whether a person understands right from wrong. Mr. Gammick asserted that in most if not all instances, the facts of the case and the conduct of the defendant will reveal whether the defendant understood right from wrong. Attempts to cover up one's actions, flee, or deny committing a crime to avoid culpability are indicators that the person understands his acts were wrong.

Ben Graham

Ben Graham, Chief Deputy District Attorney, Office of the Clark County District Attorney, Las Vegas, noted that he agreed with most of the testimony offered by previous witnesses. In his view, no prosecutor would want to execute a mentally retarded individual. He explained that the Office of the Clark County District Attorney conducts critical death penalty panel discussions concerning mitigating circumstances to determine whether seeking the death penalty would be appropriate. He indicated that the death penalty is not sought very often.

Victor-Hugo Schulze II

Victor-Hugo Schulze II, Deputy Attorney General, Office of the Attorney General, Las Vegas, stated that before attending law school, he obtained a master's degree in social work at the University of Wisconsin in Madison, and his area of concentration was developmental disabilities. He completed an internship at Central Wisconsin Center for the Developmentally Disabled, which is an institution that serves the needs of profoundly and severely institutionalized young adults with medical problems preventing normalization into the community. He also served an internship at the Waisman Mental Retardation/Developmental Disabilities Research Center at the University of Wisconsin working with children who were mildly and moderately retarded.

Mr. Schulze shared his views regarding imposition of the death penalty on persons who are afflicted with mental retardation, covering the following points:

- An IQ is a score created by man. The reliability of IQ testing needs to be critically reviewed.
- During the 2001 Session, he testified against A.B. 353, presenting data on IQ tests and their lack of stability.
- In his experience, the results of IQ testing are neither consistent over time for specific individuals nor historically over society. For instance, IQs in the United States and Europe have substantially increased over the last 20 years, which should raise questions concerning the validity and reliability of such testing.
- Since intelligence is not a static characteristic, individual IQ scores change over a person's lifetime as his or her test-taking skills improve.
- It is possible for IQ tests to be inaccurately scored as Mr. Pescetta alluded to in his testimony.
- Further, IQ testing is subject to economic, ethnic, and racial bias and may not measure a person's innate intelligence.
- He believes that efforts are underway to solve a problem that in his view does not exist. Safeguards are currently in place to appropriately address this issue.
- He challenged previous witnesses to find support in the *DSM IV: Diagnostic and Statistical Manual of Mental Disorders* or in professional literature for the argument that every person who is mentally ill (ipso facto) is not competent to stand trial.
- Mental capacity and competency are two separate issues. Competency offers one safeguard; another is the ability of the defendant to raise mental retardation as a mitigating circumstance. Mental retardation is a relevant issue,

and it is ineffective for a defense attorney not to raise this matter before the jury.

- If recent polls are accurate and most people oppose imposition of the death penalty for mentally retarded defendants, then mental retardation is a powerful mitigator. It is rare that a jury will allow the execution of a defendant who can demonstrate mental retardation.

- Punishment provides accountability for those who can differentiate between right and wrong.

- Based on the assumption that all persons afflicted with mental retardation are incompetent, it would be inconsistent to approve of sentencing mentally retarded murderers to life imprisonment but not death. In his view, a person who is deemed competent can be tried and punished. However, if a person is incompetent, he or she cannot be tried for any crime.

- He is aware of the facts surrounding two of the three cases involving the death row inmates referenced by Mr. Pescetta. From the view of prosecutors, the defendants were not led to the crime scene by more culpable people. Two of the defendants committed particularly egregious acts against the victims, with one of the crimes involving racial and sexual overtones.

- He rejected the view that all people who are mentally retarded are the same and argued that the best way to address mental retardation and competency issues is before a jury. A professional should ascertain competency. While examining the facts of a case, the jury should evaluate mitigating circumstances on an individual basis.

Chairwoman Leslie observed that Mr. Schulze rejected the criteria for making a diagnosis of mental retardation and pointed out that the state utilizes those standards to qualify individuals to receive services. Based on his social work background, Ms. Leslie questioned what standard the state should use to identify individuals with mental retardation who are applying for services. Responding, Mr. Schulze stated that he did not globally reject the concept of mental retardation. Rather, it was his intent that the subcommittee consider mental retardation or IQ as an innate individual characteristic. He explained that IQ testing was developed in France during the 1890s. Intelligent quotient tests were originally designed and used to predict a person's success in school in a way similar to current Scholastic Achievement Tests. Mr. Schulze pointed out that the tests were not designed to be utilized in a criminal justice context. In his view, obtaining state services for a disability is an issue more closely related to the IQ test's original educational purpose. He acknowledged that mental retardation is a relevant issue and pointed out the difficulties inherent in utilizing a testing paradigm from the educational system and applying it in a criminal justice context. Mr. Schulze asserted that mental retardation should be addressed as a mitigating circumstance in front of a jury.

Senator James asked if the law could accomplish a fair distinction relating to mental retardation and the death penalty. Mr. Schulze said he opposed establishing a "bright-line" test in this area for the same reason the U.S. Supreme Court reinstated capital punishment; that is, determinations of the appropriateness of the death sentence should be made on an individual basis, reviewing the entire life history of the individual. Senator James questioned whether Mr. Schulze favored allowing a jury to determine the standard. Mr. Schulze said the defense attorney presents evidence of past mental and social functioning. However, the facts of the case are also relevant, and it is important that they are reviewed.

Continuing, Senator James pointed out that allowing the jury to make the determination would not establish objective criteria; rather, it offers a case-by-case, fluid standard. Mr. Schulze agreed, adding that the fluidity and the individual determination of the appropriateness of capital punishment is the foundation established by the U.S. Supreme Court and followed by the Legislature in passing the current statutes. He noted that the defense bar has argued the individualized determination since *Gregg v. Georgia*, 428 U.S. 153 (1976), and he agreed that such a process is appropriate in this area. In his view, the best method to present evidence on the social and individual functioning of a criminal defendant in a murder case is as a mitigating factor to the jury.

Senator James asked which sentence was more harsh—LWOP or the death penalty, assuming that the execution is carried out. Mr. Schulze observed that the general claim on federal habeas petitions is that an inmate on death row would prefer a penalty of LWOP. Such defendants often claim that their counsel was not aggressive in the sentencing hearing. However, one petitioner expressed a preference for being placed on death row, claiming that his attorney ignored his requests for a trial and should not have pled the case. Senator James said he did not want an anecdotal

answer. Assuming that the death penalty is constitutional and is not cruel and unusual punishment, he reiterated his question regarding which is the worse sentence.

Mr. Schulze pointed out that sentencing preferences may differ among inmates; hence, there is no an answer.

Chris Laurent

Chris Laurent, Chief Deputy District Attorney, Office of the Clark County District Attorney, Las Vegas, said that in his view, death row is a harsher sentence than LWOP. He explained that some inmates convicted of murder are not sent to the Ely correctional facility. Depending on the inmate's criminal history and the nature of the crime, it is possible for an inmate sentenced to LWOP to be incarcerated at a medium security facility. Senator James asked if the restrictions and privileges within the prison should be changed rather than attempting to establish distinctions as to who is sentenced to death or LWOP.

Mr. Gammick pointed out that each case is unique, and there is no simple answer as to whether LWOP or the death penalty is a harsher sentence. Each case involves a defendant, defense attorneys, judges, a jury, prosecutors, and a victim. It would not be acceptable to have a computerized system with the same result every time.

Referring to Mr. Schulze's comments regarding IQ scores, Senator Neal asked him to explain how he expected untrained jurors to determine whether a person is mentally retarded. Mr. Schulze explained that the issue is not simply whether an individual is mentally retarded. The question that juries in capital sentencing hearings are addressing is broader. Each jury determines, as established in *Gregg*, whether capital punishment is appropriate for the individual defendant. He reiterated that mental retardation is always an appropriate mitigating circumstance and pointed out that juries have the benefit of experts. A crucial issue is the training of the defense attorney at trial. In his view, if funds are allocated to address issues pertaining to capital punishment, they should be allocated to training of defense counsel.

Senator Neal asked Mr. Schulze if in his opinion an individual is born with an innate ability to distinguish right and wrong. Mr. Schulze prefaced his response by noting that he is a sociologist by training. He opined that people are not born with an innate ability to distinguish right from wrong; rather, they learn right from wrong based on the individual's culture. Senator Neal questioned whether retardation could be considered a cultural difference. Mr. Schulze said the history of IQ testing has shown that children from minority communities consistently over-represent those in special education programs because of economic, ethnic, and racial bias in such tests. Senator Neal asked if, absent the test, the mental capacity of all persons is the same. Mr. Schulze said he is not aware of any objective studies that demonstrate in American culture today that there are innate differences in IQs among racial groups. In his view, the problem lies with the testing process, not with people, which is part of the reason the issue of mental retardation must be submitted to juries for individual determinations.

Referring to previous questions asked of Mr. Gammick, Senator Neal asked Mr. Graham how the Office of the Clark County District Attorney decides whether to seek the death penalty for an individual who might be eligible for a defense of mental retardation. Mr. Graham explained that a panel of senior deputy district attorneys, including the prosecuting attorney, decides whether to request the death penalty, LWOP, or life with the possibility of parole. Arguments for all possible sentences are presented to the panel, and mitigating factors, including mental retardation, are discussed extensively.

Senator Neal asked for an explanation of the panel's process if the mitigating factor of mental retardation is raised. Mr. Graham said the panel reviews any medical and scientific examination reports from both the defense and prosecution perspectives. He noted that the death penalty is seldom sought.

Senator Neal questioned whether mental retardation is discussed before an indictment is filed or after the panel has determined a capital charge is appropriate. Mr. Graham explained that before approving a case, the state has an obligation to presuppose that it could persuade a jury to find the defendant guilty beyond a reasonable doubt. The homicide detectives assemble the case, gathering all evidence. The charge is sometimes reduced after the police submit the case for prosecution. The death penalty can only be sought when first-degree murder is approved. This completes the initial screening stage. A trial deputy then reviews the file again and determines what would be an appropriate penalty in light of all the circumstances of the case. After this review is completed, the panel discusses the three potential sentences.

Senator Neal asked if each case is considered in terms of arriving at justice. Mr. Graham stated that prior to approving a case, the Office of the District Attorney must ensure that commission of the criminal act can be proven beyond a reasonable doubt. Senator Neal questioned whether Mr. Graham considered mental retardation as a mitigating factor in all cases. Mr. Graham replied that prosecutors in the state are aware of the issue of mental retardation, and the topic is raised.

Assemblyman Anderson questioned Mr. Schulze's remarks that the mentally retarded should not be held responsible for wide breaches of the law. If that were the case, Mr. Anderson queried what penalty would be imposed for the mentally retarded. Mr. Schulze explained that his argument was intended as a critique to Professor Williams' position that an individual is not competent by virtue of a diagnosis of mental retardation. He noted his disagreement with that position, stating that this view presents an inherent conflict in that it suggests that an individual who is not competent should not be executed but could be sentenced to LWOP. Mr. Schulze asserted that competency and mental retardation are not overlapping issues, although they may be related in some cases. Mentally retarded defendants can be fully competent, which is different from insanity.

Assemblyman Anderson pointed out that the jury must take into consideration the entire scope of circumstances. The IQ test is one of a series of standards used to decide whether a person is mentally retarded, but it is not the sole determining factor. The jury must weigh that element against the many others presented. In his view, a jury might find it difficult to release a mentally retarded defendant who has committed a crime. Continuing, Mr. Anderson indicated that he favors statutorily establishing a screening process so that the issue of mental retardation would not be decided by the jury. Mr. Schulze acknowledged that sentencing is a difficult issue. All aspects of the defendant's background are relevant to the sentencing determination, especially in a capital case.

Mr. Graham interjected that the retardation issue is a mitigating factor the defense would present to the jury, and the issue of competency is determined earlier. If the defendant is not competent, there would be no trial.

Mr. Schulze pointed out that while mental retardation offers a mitigating circumstance, penalty choices would not be limited to the death sentence or release. Sentencing options for a capital crime would include a death sentence, LWOP, or life imprisonment with the possibility of parole. The jury would have a number of sentencing options available. He also pointed out that if the polling data cited by previous witnesses is accurate, then the existence of mental retardation alone will cause juries in seven out of ten capital cases across the country to sentence the defendant to life in prison rather than death.

Assemblyman Anderson observed that persons who would not impose a sentence of death on a mentally retarded defendant would likely not be impaneled to serve on a jury in a capital case.

Lila Holdsworth

Lila Holdsworth, private citizen, Las Vegas, advocated enactment of a law exempting mentally retarded persons from the death penalty. Ms. Holdsworth reported that she has worked with mentally retarded individuals for almost 30 years. She noted that every state that has executed a mentally retarded person has had the same protections as those currently in place in Nevada. Regarding IQ testing, Ms. Holdsworth reported that a range of scores is expected. For example, IQ scores of 64, 68, and over 70 for one person are within an acceptable range, particularly in view of the fact that parts of the tests are timed. A determination of mental retardation cannot be made in a few moments.

The following documents regarding imposition of the death penalty on mentally retarded individuals were submitted without remarks:

1. A copy of a document titled "Mental Retardation and the Death Penalty," provided by Nicolas C. Anthony, Senior Research Analyst, Research Division, Legislative Counsel Bureau, Carson City (Exhibit I); and

2. A reprint of a *New York Times* Internet article dated February 20, 2002, titled "When Guilt Is Beyond Understanding," written by Morgan Cloud and George Shepherd, Professors at Emory University School of Law, provided by Nancy Hart, State Death Penalty Abolition Coordinator for Amnesty International and Acting Chairwoman of the Nevada Coalition Against the Death Penalty, Reno (Exhibit J).

PRESENTATION ON THE IMPOSITION OF THE DEATH SENTENCE ON PERSONS UNDER THE AGE OF 18 AT THE TIME OF THE OFFENSE

Mark Blaskey

Mark Blaskey, Chief Deputy Public Defender, Clark County Public Defender's Office, Las Vegas, provided the subcommittee with an outline of his testimony (Exhibit K). Mr. Blaskey offered the following remarks:

- Children are treated differently because they lack the maturity and wisdom of an adult.
- In Nevada, a 16- or 17-year-old child cannot purchase cigarettes; purchase, possess, or consume alcohol; get married without parental consent; be drafted into the military; become a police officer; enter into a contract; gamble; or even be in a casino area. The biggest disparity that illustrates the problems with the juvenile death penalty is the fact that money is spent on television commercials to prohibit children from buying cigarettes while the state has the right to execute them if they commit a crime.
- It was his experience after serving five years in the capital murder unit of the Clark County Public Defender's Office that in the vast majority of murder cases, people do not plan the crime; rather, they act on impulse. Juveniles act on impulse and do not plan past the end of the day.
- Only the United States and the Democratic Republic of the Congo still execute juveniles.
- Treaties that prohibit execution of people who commit crimes when under the age of 18 include the following:
  1. International Covenant on Civil and Political Rights, which has been ratified by 145 countries;
  2. Convention on the Rights of the Child, which was signed by the United States but has not yet been ratified; and
  3. American Convention on Human Rights (Executive Order 13107), which ordered the United States to fully respect and implement its obligations under international human rights treaties.
- International law includes treaties that forbid the execution of 16 and 17-year-old offenders.
- Germany is suing the United States over an execution that was carried out in violation of a treaty ratified by the United States.
- Although there is near global support for the United States after the terrorist acts of September 11, 2001, virtually all of Europe has announced that they will not allow extradition of the terrorists to the United States if the death penalty is sought against them.
- In the United States, a 16-year-old offender can receive the death penalty in only 17 states, including Nevada. Since 1976, only seven states have executed juvenile offenders.
- No state has ever lowered the age limit for the death penalty.

Mr. Blaskey recommended that the Legislature raise the age limit for imposition of the death penalty from 16 to 18 years, noting that such action would place Nevada into conformity with the rest of the world and the majority of the states. He explained that in Nevada, a person sentenced to LWOP cannot apply for parole or have his or her sentence commuted by the State Board of Pardons Commissioners. Consequently, a sentence of LWOP would be a substantial punishment for a juvenile committing such a crime.

Mary E. Berkheiser

Mary E. Berkheiser, Associate Professor of Law, William S. Boyd School of Law, University of Nevada, Las Vegas (UNLV), Las Vegas, provided the subcommittee with an outline of her testimony (Exhibit L), together with the following materials:

1. "(Im)maturity of Judgment in Adolescence: Why Adolescents May Be Less Culpable Than Adults," written by Elizabeth Cauffman, Ph.D. and Laurence Steinberg, Ph.D., *Behavioral Sciences and the Law*, Chapter 18, pp. 741-760 (2000);

2. "The Evolution of Adolescence: A Developmental Perspective on Juvenile Justice Reform," written by Elizabeth S. Scott and Thomas Grisso, Northwestern University School of Law, for the Symposium on the Future of the Juvenile Court, *Journal of Criminal Law and Criminology*, 1997;

3. An excerpt from *Youth on Trial: A Developmental Perspective on Juvenile Justice*, Chapter 10 titled "Penal Proportionality for the Young Offender: Notes on Immaturity, Capacity, and Diminished Responsibility," written by Franklin E. Zimring; and

4. An excerpt from *Youth on Trial: A Developmental Perspective on Juvenile Justice*, Chapter 11 titled "Criminal Responsibility in Adolescence: Lessons From Developmental Psychology," written by Elizabeth S. Scott.

Professor Berkheiser announced that she was appearing in her capacity as the Director of the Juvenile Justice Clinic at the Boyd School of Law, where she researches and writes in the areas of juvenile rights and responsibilities, and as a former high school teacher from Tucson, Arizona, where she worked primarily with troubled children in delinquency proceedings. She clarified that she was not an expert on developmental psychology and the implications of the death penalty being applied to juveniles.

Professor Berkheiser recognized that juveniles are developmentally different from adults— biologically, environmentally, psychologically, and socially. Recent studies of the development of the brain illustrate that the decision-making areas continue to develop into late adolescence, beyond the age of 16 and into early adulthood. She said that experience is the greatest teacher, and teenagers lack such experience. This immaturity impedes juveniles' ability to make good decisions and to conform their conduct to the requirements of the law. Further, teens lack impulse control and self-restraint from aggressive behavior. Peer pressure to conform and to avoid appearing foolish or being embarrassed is remarkable and is often manifested in many ways. Moreover, these characteristics only abate with age. Teenagers focus on the present and have no concept of long-term consequences. In addition, they desire to engage in risk-taking behavior such as drinking too much or driving too fast, have no fear of death, and see themselves as invincible.

Continuing, Professor Berkheiser discussed factors exhibited in juveniles involved in crime. They have high levels of documented serious mental illness; head injuries; severe emotional, physical, and/or sexual abuse by parents or other family members; low IQ scores; and learning disabilities. Family members and the juveniles themselves often attempt to conceal these factors. Professor Berkheiser did not suggest that these juveniles should not be held accountable for their actions. She agreed that LWOP, life imprisonment with the possibility of parole, or a term of years are consequences that they should have to face. The issue of LWOP has been challenged in the courts. Even the U.S. Ninth Circuit Court of Appeals, which tends to be liberal, has said that it is not unconstitutional for a youth (under the age of 18) to be committed to a life prison term without the possibility of parole.

In conclusion, Professor Berkheiser commented that raising the age of eligibility of the death penalty to 18 is preferable, rather than continuing the present practice of relying on mitigation evidence at sentencing. Juvenile murderers are particularly brutal and are not amenable to civil entreaties to stop killing. These brutalities often appear as an aggravator and make the mitigation burden more difficult in juvenile cases. People fear that violent offenders will be released back into the community, resulting in acceptance of the application of the death penalty, yet other measures will work with juveniles. A salient fact to be considered is that juveniles change as they mature, and the death penalty has no deterrent value for juveniles. Raising the minimum age of eligibility for capital punishment from 16 to 18 years would not diminish any deterrent value that a death sentence might have for potential offenders. Finally, Professor Berkheiser announced that there are 83 teen offenders on death row compared to the thousands of adult inmates.

Assemblyman Anderson expressed concern that Professor Berkheiser's testimony did not include comments on the

rejection of authority that seemingly begins at 11 to 12 years of age or the quandary between the parents' and the school's control of a child. Mr. Anderson questioned how this rejection of authority fit into her scenario of social experience and risk-taking behavior. Professor Berkheiser agreed that rejection of authority would be within the social experience area, but noted that it contributes to the definition of oneself, which is an element of the peer pressure and conformity issues as well. There is often tension between what parents want for their child, the child's desires, and the role the defense lawyer expects of the juvenile. The defense lawyer is obligated to fulfill the interest of the client to the extent the juvenile is able to articulate, even when the defendant is under the age of 18.

Continuing, Assemblyman Anderson shared his experience with student groups who assign penalties to other students for their behavior within the academic setting. These student panels tend to favor harsher punishment than an adult might set for a similar infraction. Given the high standards that juveniles apply to one another, Mr. Anderson questioned whether a jury of their peers would sentence a youth to death. Professor Berkheiser stated that from her limited research, young people possess a strong sense of fairness and justice. This sort of morality and justice may partially explain why children mete out strong penalties to their comrades. She noted that law students exhibit the same behavior with their "Discipline Czars" in the classroom. While death is not a reality to children, their advanced experience in drugs, the Internet, information overload, and sex makes it even more difficult in the transition of learning, becoming socially mature, and developing good judgment with all the distractions that contribute to the impulsive behavior and peer pressure.

Elizabeth M. Tully

Elizabeth M. Tully, M.D., Medical Director, Desert Willow Treatment Center, Southern Nevada Child and Adolescent Services, Division of Child and Family Services, Nevada's Department of Human Resources, Las Vegas, read from a prepared statement (Exhibit M). Dr. Tully presented the viewpoint of a number of organizations she represents, including the Nevada Association of Psychiatrists; the Nevada Council of Child and Adolescent Psychiatry; the American Psychiatric Association; and the American Academy of Child and Adolescent Psychiatry. Dr. Tully reported that each of these organizations strongly opposes imposition of the death penalty for crimes committed by juveniles. She then read into the record the American Academy of Child and Adolescent Psychiatry Policy Statement on Juvenile Death Sentences (see Exhibit M). She concluded her testimony with no further comment.

Richard L. Siegel

Richard L. Siegel, previously identified on page 10 of these minutes, referenced Mr. Blaskey's remarks concerning international law relative to the death penalty, noting a much clearer boundary with regard to the execution of juveniles. He reported that the Arizona poll was more sharply divided on the juvenile issue, with 42 percent of those polled opposing the execution of juveniles convicted of first-degree murder, 37 percent supporting such action, and 16 percent taking a middle position (Exhibits D and E).

Continuing, Professor Siegel asked the subcommittee to consider why the United States is the only country in the world that applies capital punishment to juveniles. He argued that higher crime rates are not responsible, pointing out that some developing countries experience crime rates that are 10 to 20 times greater than that of the United States. Professor Siegel surmised that many factors contribute to the continued utilization of capital punishment in the United States, including:

- Politicization of the death penalty, which tends to be raised during election campaigns;
- Sensationalism of American television towards execution; and
- Weakness of church influence in the United States, including the opposition of the Catholic Church.

The following materials regarding this topic were provided to the subcommittee by Nicolas C. Anthony, Senior Research Analyst, Research Division, Legislative Counsel Bureau, Carson City:

1. A copy of a document titled "The Juvenile Death Penalty Today: Death Sentences and Executions for Juvenile Crimes, January 1, 1973—December 31, 2001," with the latest corrections and changes entered on March 8,

2002, written by Victor L. Streib, Professor of Law, The Claude W. Pettit College of Law, Ohio Northern University, <http://www.law.onu.edu/faculty/streib/juvdeath.htm> (April 9, 2002) (Exhibit N); and

2. A copy of a document dated April 2002 titled "Juvenile Death Penalty History and Analysis" prepared by the Juvenile Death Penalty Initiative (Exhibit O).

PRESENTATION ON THE COSTS ASSOCIATED WITH THE DEATH PENALTY

Chairwoman Leslie introduced Richard C. Dieter of the Death Penalty Information Center, a nonprofit organization serving the media and the public with analyses and information on issues concerning capital punishment. She explained that the Center was founded in 1990 and prepares in-depth reports, issues press releases, conducts briefings for journalists, and serves as a resource to those working on this issue. The Center is widely quoted and consulted by persons concerned with the death penalty. Mr. Dieter is an attorney who has written and spoken extensively on this subject.

Richard C. Dieter

Richard C. Dieter, Executive Director, Death Penalty Information Center, Washington, D.C., read from a prepared statement (Exhibit P) as he testified via videoconference from Washington, D.C. He asserted that the cost of the death penalty is central to the debate of capital punishment for two reasons:

1. Discussion of the death penalty relates directly to the safety of the community. The funds expended to administer the system of capital punishment could be spent on other mechanisms to ensure community safety such as additional law enforcement officers patrolling the streets, improved lighting in crime areas, longer periods of incarceration for offenders, or projects to reduce unemployment.

2. The costs associated with capital punishment play a key role in how the death penalty is implemented. Any system of capital punishment should not take unnecessary risks with innocent lives and should be applied with a strict sense of fairness.

Mr. Dieter commented that Nevada has not conducted a recent in-depth study of how much its capital punishment system costs. The studies that have been conducted in other states differ widely in their level of sophistication and the assumptions they make, but they all agree that the death penalty is considerably more expensive than a system in which life imprisonment is the most severe punishment.

Every stage of an ordinary trial is evident to a greater degree in a death penalty case. For example:

- Death cases typically take a year to come to trial, causing increased pretrial preparation time;
- More pretrial motions will be filed and answered;
- Additional experts will be hired;
- Two attorneys will probably be appointed for the defense and a comparable team for the prosecution, compared to one in a noncapital case;
- Jurors will be individually quizzed on their views concerning the death penalty;
- It is more likely that jurors will be sequestered;
- Two trials will be conducted: one for determination of guilt and another for sentencing;
- Death penalty trials take three to five times longer to conduct than typical murder trials; and

- There may be a series of appeals during which inmates are held in the high security of death row.

Mr. Dieter reported that only after an execution might the capital punishment system actually cost less than a nondeath penalty system. However, few death sentences imposed have been carried out in the past 25 years, so the savings have been relatively small. Since capital punishment was reinstated, 7,000 death sentences have been imposed in the United States while only 700 executions have been carried out. In Nevada, 133 death sentences have been imposed, and nine executions have been performed. These statistics demonstrate that 10 percent of death sentences result in executions, but all of the cases incur additional costs.

Referencing a recent study conducted by Professor James Liebman of the Columbia Law School, Mr. Dieter reported that two-thirds of death penalty decisions are overturned on appeal. On retrial, over 80 percent of defendants receive a sentence less than death while 5 percent result in executions. Further, he said that for 90 percent of the cases, the state pays both the extra expense of seeking the death penalty, and when the sentence is not carried out, the costs of life imprisonment.

Moreover, there are the "opportunity" costs. Mr. Dieter noted that these costs do not appear as line items in the budget—for employees already receiving state salaries (defense attorneys, judges, prosecutors, and other staff) and for the facilities which exist whether or not they are being used for a capital punishment trial. These costs will continue to be paid. Nevertheless, if death penalty trials consume more time and staff that is not available for other cases, the difference is a net cost measured in hours of all the participants.

Mr. Dieter reported that recent studies relative to the cost of the death penalty have found as follows:

- The most comprehensive study conducted in the country found that the death penalty costs North Carolina $2.16 million per execution over the cost of a nondeath penalty system imposing a maximum sentence of imprisonment for life based on the number of executions actually carried out. If every death sentence resulted in an execution, the extra costs to the taxpayers would still be $216,000 per execution.

- A *Miami Herald* study conducted in 1988 reported Florida's cost per execution at $3.2 million based on the rate of executions carried out. Controversy over the electric chair hindered the capital punishment system, resulting in amended estimates of $51 million a year over the costs of a nondeath penalty system imposing a maximum sentence of imprisonment for life. Based on the 44 executions carried out in Florida from 1976 to 2000, a *Palm Beach Post* study reported the cost per execution to be $24 million.

- The *Dallas Morning News* reported a cost to Texas of $2.3 million per execution, or three times the cost of imprisoning an inmate in a single cell at the highest security level for 40 years.

- In addition, the *Sacramento Bee* found that the death penalty costs California $90 million annually beyond the ordinary costs of the justice system, $78 million of which is incurred at the trial level. Since California carries out less than one execution a year, the cost per execution would exceed $90 million a year.

Continuing, Mr. Dieter offered the following additional remarks:

- Other studies have been conducted, though none have calculated costs through the whole process. The Judicial Conference of the United States report "Federal Death Penalty Cases: Recommendations Concerning the Cost and Quality of Defense Representation," dated May 1998, found that defense costs were almost four times higher in death penalty cases. Further, prosecution expenses were 67 percent higher than the defense costs in capital cases. These estimates did not include investigative costs of law enforcement agencies.

- A recent *Wall Street Journal* article reported that when counties are chiefly responsible for prosecuting capital cases, the expenses of such proceedings place a burden on local budgets that is comparable to the cost of a natural disaster, often requiring an increase in taxes and causing some local governments to near bankruptcy.

- Costs of the death penalty are inescapable and likely to increase in the near future. The majority of such costs is

incurred at the trial level and cannot easily be reduced.

In closing, Mr. Dieter reported that the Illinois Commission on Capital Punishment report recommended reducing the number of qualifying crimes for the death penalty and focusing on the most egregious offenders, where fewer mistakes are usually made. It is anticipated that implementing these steps would not only save the state money because the death penalty would be sought less often, but would also eliminate prosecution of borderline capital cases that would more likely be subject to reversal on appeal. Mr. Dieter urged the subcommittee to consider adoption of the Illinois Commission's recommendations in Nevada.

The following materials regarding the cost of the death penalty were submitted by Nicolas C. Anthony, Senior Research Analyst, Research Division, Legislative Counsel Bureau, Carson City:

- A report dated October 1992 by the Death Penalty Information Center titled "Millions Misspent, What Politicians Don't Say About the High Costs of the Death Penalty" (Exhibit Q);

- An Internet document titled "Costs of the Death Penalty," Death Penalty Information Center <http://www.deathpenaltyinfo.org/costs2.html> (April 8, 2002) (Exhibit R);

- A document published in the January 2000 edition of *The Advocate* titled "Cost, Deterrence, Incapacitation, Brutalization and the Death Penalty, the Scientific Evidence, Statement Before the Joint Interim Health and Welfare Committee," written by Gary W. Potter, Ph.D., Department of Justice and Police Studies, Eastern Kentucky University (Exhibit S);

- A March 8, 1992, *Dallas Morning News* article titled "Executions Cost Texas Millions" (Exhibit T);

- A Duke University news release dated May 27, 1993, titled "Study Finds Each Death Penalty Costs North Carolina More Than $250,000" (Exhibit U);

- A document dated July 2001 titled "The Budgetary Repercussions of Capital Convictions," written by Katherine Baicker, National Bureau of Economic Research (Exhibit V); and

- An undated white paper titled "The High Costs of the Death Penalty," prepared by the American Civil Liberties Union, Capital Punishment Project (Exhibit W).

Richard Gammick

Richard Gammick, previously identified on page 14 of these minutes, reminded the subcommittee to consider the costs of the death penalty as they relate to society, victims' families, and others that are affected by the choice a defendant makes when he or she commits murder and is sentenced to death. If not for the murderer, district attorneys would not appear in court, using resources to prosecute these offenders, and it would not be necessary to have a subcommittee participating in this discussion.

Daniel J. Greco

Daniel J. Greco, Chief Deputy District Attorney, Office of the Washoe County District Attorney, Reno, said the cost of executing a person is not high but the expense of the proceedings leading to the death sentence has become excessive. Nevertheless, it was not always that way. There have been 72 legal executions in Nevada, 63 of which occurred prior to 1972, including one in West Carson City in 1860 when the area was still known as the Utah Territory. According to a study conducted by the Nevada State Library and Archives, Nevada's Department of Cultural Affairs, of those 63 executions carried out between 1860 and 1972, the average time that passed between the initial sentence of death and the actual execution was between one and three years. The maximum time that passed between the imposition of sentence and the actual execution was only four and a half years. Since 1976, when the U.S. Supreme Court reinstated capital punishment, there have been only nine executions in Nevada, eight of which were voluntary and one that was a contested proceeding. Mr. Greco noted that if the Legislature eliminated the death penalty in the near future, the cost savings previously discussed would not be fully realized because the vast majority

of those that defend cases on appeal are paid by the public, a set amount not on a retainer basis. In addition, that segment of the bar would simply shift its focus from claiming that the death penalty is cruel and unusual punishment and a violation of the Eighth Amendment, to claiming that LWOP is cruel and unusual punishment and a violation of the Eighth Amendment. Moreover, many of the state costs are borne by district attorneys or other law enforcement personnel and/or investigators who have set salaries. These offices would also shift their focus.

Richard Gammick

Richard Gammick, previously identified on page 14 of these minutes, spoke briefly on *The Anti-Terrorism and Effective Death Penalty Act of 1996* (AEDPA), Pub. L.104-32, 110 Stat. 1214 (effective April 24, 1996), 28 U.S.C. §§ 2244-66, and more specifically, the Chapter 154 "opt-in" provisions to become a fast-track state. He explained that Chapter 154 of AEDPA includes special rules for death penalty cases. The state must "opt-in" to obtain benefit of the provisions under 28 U.S.C. §§ 2261-66, which set forth a limitation period of six months and a short timetable for court action. As of today, no court has held that any state has satisfied the opt-in provisions to obtain benefits under Chapter 154.

Continuing, Mr. Gammick said the purpose of amending Nevada Supreme Court Rule 250 by the Fondi Commission was to qualify Nevada as an opt-in state. In addition, the Legislature provided funding for death penalty education through the National Judicial College. Several courses were taught, which included defense attorneys, judges, and prosecutors. He was recently advised that the funding for that valuable program has been discontinued, and no further classes are scheduled in the near future. That is a critical aspect of qualifying as an opt-in state.

In closing, Mr. Gammick said some of the benefits of AEDPA such as allowing a defendant one shot at raising his issues in appeal, reducing the time in the court, and placing a priority on death cases could equate to a direct savings in finances if the system is streamlined. However, to be granted opt-in status, states must dramatically improve an inmate's access to qualified, competent counsel.

Ben Graham

Ben Graham, previously identified on page 16 of these minutes, reported that it has been his experience in litigating LWOP and death penalty cases that the costs are equal. If the death penalty is eliminated or reduced, he expected continued expenditures litigating the LWOP cases in regard to the number of attorneys involved. In his opinion, there would not be a significant reduction in costs.

Referencing Mr. Dieter's remarks, Mr. Graham agreed that the cost of prosecuting death penalty cases presents a significant issue for small counties. Both Clark and Washoe Counties have offered to send experienced prosecutors to assist in the rural communities at no expense to the smaller counties, except for room, board, and transportation.

Larry Struve

Larry Struve, Religious Alliance in Nevada (RAIN), Reno, submitted a memorandum to the subcommittee (Exhibit X) dated April 18, 2002, requesting reliable information on the fiscal impact that Nevada's current death penalty system has on state and local budgets. The RAIN is interested in this issue because the state is facing a serious revenue shortage. Nevada Governor Kenny C. Guinn anticipates a structural deficit in the state budget of $1 billion in the next eight to ten years, and an interim task force is reviewing this issue. He reported that at a recent RAIN meeting, Assemblywoman Chris Giunchigliani indicated there might be as much as a $289 million budget shortfall at the beginning of Nevada's next fiscal year. Clearly, the way Nevada's tax dollars are being spent is a serious issue. For RAIN, the shortfall would be measured in terms of reductions in education; health; long-term care of the elderly; and assistance for the poor, disabled, and families and children at risk—all are in jeopardy because of Nevada's current fiscal position. As a result, RAIN expects every tax dollar to be spent as wisely as possible.

With respect to the death penalty, Mr. Struve said RAIN contends that the citizens of Nevada should understand what it costs to execute a person in Nevada and to maintain these inmates pending their execution date as compared to that of individuals serving a LWOP sentence. Assuming there are additional costs associated with death penalty trials in Nevada, the fiscal resources required cannot then be used for other programs and services. In closing, Mr. Struve commented that RAIN anticipates that when the subcommittee makes its final recommendations, the fiscal impact of the death penalty system will be included.

Maizie W. Pusich

Maizie W. Pusich, Chief Deputy Public Defender, Washoe County Public Defender's Office, Reno, provided the subcommittee with a memorandum dated April 15, 2002 (Exhibit Y), which provided specific information on the hours required to prepare and try a capital punishment case. Ms. Pusich asserted that the administration of the death penalty is fraught with problems, and the cost to our society is too high.

PRESENTATION ON THE IMPOSITION OF THE DEATH SENTENCE ON PERSONS UNDER THE AGE OF 18 AT THE TIME OF THE OFFENSE (CONTINUED)

Richard Gammick

Richard Gammick, previously identified on page 14 of these minutes, clarified that the juveniles being discussed should not be referred to as children. These are 16- and 17-year-old individuals who have been in the criminal justice system, convicted of first-degree murder, gone through a penalty phase with a jury or a three-judge panel, and sentenced to death. Mitigation circumstances, including the age of the defendant, have been presented. From personal experience, Mr. Gammick disclosed that juries have trouble during penalty phases that involve young people. Consequently, these cases have been ruled by a court and by a jury as being the worst, necessitating sentencing 16- and 17-year-old offenders to the death penalty.

Continuing, Mr. Gammick said the Federal Bureau of Investigations' uniform crime reporting system distributes information on seven category one crimes. For the last four years, these crimes have decreased not only in the state, but also specifically in Washoe County. The one area that has not decreased is that of violent juvenile crimes. While 16- and 17-year-old juveniles cannot go into a grocery store and buy cigarettes, this does not prevent them from walking into that same store, demanding money, and then shooting and killing the clerk. Such crimes are eligible for the death penalty.

Referring to previous testimony, Mr. Gammick said the ultimate poll is the ballot box. The voters of this state, and of 38 other states, have said they favor the death penalty and want it carried out fairly and expeditiously. A case involving a 17-year-old offender sentenced to death by a jury in Washoe County was recently overturned by the Nevada Supreme Court. The Court found the legal elements had been met and the decision was properly reached but took exception to the age of the defendant. One case tried by Mr. Greco involved a 17-year-old who, at a gang face-off, shot and killed one opponent, shot and crippled another, and then shot into the crowd with a school and a store in the background. In Mr. Gammick's view, individuals who commit such acts must be eligible for the death penalty. He urged the subcommittee not to change the age limits for death penalty eligibility.

Assemblyman Anderson asked how many cases have been prosecuted where juveniles have been involved in murder type events. Mr. Gammick said four. Further, Mr. Anderson queried if the prosecution sought the death penalty under an adult statute. Mr. Gammick said murders are automatically handled as adult cases. In three of the four cases, the prosecution sought the death penalty. Only two defendants were sentenced to death.

Daniel J. Greco

Daniel J. Greco, previously identified on page 30 of these minutes, reported that he prosecuted two other cases involving defendants under the age of 18. He explained that when charged with attempted murder or murder, defendants are automatically deemed adults.

Assemblyman Anderson asked if any defendants were under the age of 16. Mr. Greco said there was one 15-year-old defendant, but the death penalty is not available until an individual is 16 years of age.

Chris Laurent

Chris Laurent, previously identified on page 19 of these minutes, reported that the International Covenant on Civil and Political Rights was ratified with reservations related to executing those under the age of 18. He noted that only

one juvenile, who was 16 at the time of the crime, is currently on Nevada's death row. Mr. Laurent directed the subcommittee's attention to a copy of the Nevada Supreme Court's Opinion in the case of *Domingues v. State,* 112 Nev. 683, 917 P.2d 1364 (1996) (Exhibit Z) and read portions of the decision into the record.

Mr. Laurent stated that he had prosecuted four 15-year-olds who killed loved ones, parents, and brothers; however, the death penalty was not available. He asserted that the youth of a defendant is a powerful aggravator. By retaining the death penalty as an option for 16- and 17-year-old offenders, juries are given an opportunity to scrutinize cases, examine the individual, hear the evidence, and then make a determination. Nevada Supreme Court Rule 250 requires certified lawyers to protect the individual's rights. Mr. Laurent referred to the Columbine High School shootings that occurred on April 20, 1999, in Littleton, Colorado. It is Mr. Laurent's opinion that children in the United States are more sophisticated and desensitized to death and violence. With those types of individuals, the death penalty needs to be an option.

APPROVAL OF MINUTES OF THE FEBRUARY 21, 2002, MEETING

The Chairwoman called for approval of the minutes of the subcommittee=s third meeting.

SENATOR McGINNESS MOVED TO APPROVE THE MINUTES OF THE SUBCOMMITTEE=S MEETING HELD ON FEBRUARY 21, 2002, IN CARSON CITY, NEVADA. SENATOR WASHINGTON SECONDED THE MOTION, WHICH PASSED UNANIMOUSLY.

PRESENTATION ON THE DISCOVERY PROCESS IN CAPITAL CASES

Michael Pescetta

Michael Pescetta, previously identified on page 11 of these minutes, provided the subcommittee with a three-page memorandum dated January 24, 2002, regarding discovery issues (Exhibit AA) together with attachments from the federal habeas case of *Emil v. McDaniel*, United States District Court for the District of Nevada, Case No. CV-N-00-654f-DWH(VPC), including the motion to conduct discovery, the reply, and the court's order granting discovery.

Continuing, Mr. Pescetta noted that the subject of discovery is difficult. In habeas corpus cases, every decision involving a capital sentence has an allegation of ineffective assistance of defense counsel. The second most common claim in capital habeas cases is failure of the prosecution to disclose evidence at the time of trial. Federal constitutional and state law currently in effect set the legal standards. Discovery is the disclosure by the prosecution of "Brady material" [*Brady v. Maryland*, 373 U.S. 83 (1963)] or "Kyles material" [*Kyles v. Whitley*, 514 U.S. 419 (1995)] that would be favorable to the defense. Many standards are codified in NRS 174.233, "Disclosure by defendant of intent to claim alibi; defendant to disclose list of alibi witnesses; prosecuting attorney to disclose list of rebuttal witnesses; continuing duty to disclose; sanctions" and following sections. Concisely, evidence has to be disclosed by the state if there is a "reasonable probability" that it would result in a different outcome. By federal constitutional law and state statute under the *Kyles* decision, the prosecutor is charged with knowledge of everything in the possession of the police agencies that investigated the offense, and disclosure of that material is required.

According to Mr. Pescetta, the current system is ineffective. In an effort to make the system transparent and to follow all the relevant constitutional guidelines, Mr. Pescetta's recommendation included the following:

- Provide by statute for the complete open file discovery of all relevant evidence by the state in capital cases;
- Define "relevant evidence" explicitly to include any information in the possession of police and investigative agencies and district attorneys, including all information related to other codefendants, informants, suspects, and witnesses;
- A case cannot proceed as a capital prosecution until responsible parties in the district attorney's office and all law enforcement agencies involved in the prosecution have certified under oath that a diligent search has been

conducted to identify all such information and that is has been provided to the defense; and

- Once a capital conviction and sentence are final on direct appeal, the entire prosecution file on the case, including material otherwise subject to the work product doctrine, becomes a public record.

Chairwoman Leslie asked if other states have this "open discovery" process. Mr. Pescetta admitted that it is not common. The difficulty is that the *Kyles* decision requires prosecutors to not only disclose favorable evidence they have, but charges them with knowledge of evidence in the possession of other prosecuting authorities. The problem involves what is in the open file and whether it includes everything. Of special concern to Mr. Pescetta is the disclosure of incentives or inducements for codefendants and witnesses to perjure testimony providing the defendant with a motive. Rather than making a determination what is material under federal constitutional law, it would be easier to require everything to be disclosed.

Assemblyman Anderson asked for clarification regarding the initial investigation of a crime. An investigator accepts and rejects information based upon physical presence at the scene. He questioned, if a statute is created that stipulates all information must be included, how should it be determined what information is relevant. Mr. Anderson queried if the burden to the police officer will be increased beyond a reasonable level of his ability to fill out paperwork. Mr. Pescetta replied that whether or not the information is relevant, it is the report that is required.

Reiterating his question, Assemblyman Anderson asked whether everything a police officer records in his original notes is turned over to the district attorney. If so, Mr. Anderson queried whether the district attorney would retrace the police officer's steps, which would relate to additional costs. Mr. Pescetta said if an officer ascertained that it was important to question an individual, that person may be interviewed again to double check relevant information. In closing, Mr. Pescetta said that cost is appropriately addressed at the beginning of the process and not at appeal ten years later.

Daniel J. Greco

Daniel J. Greco, previously identified on page 30 of these minutes, commented that discovery in Washoe County is dramatically different today than it was 20 to 30 years ago. The office has an open file policy, which means the defendant receives a copy of every police report, witness statement, taped interview, crime lab report, autopsy report, and any other associated laboratory or police paperwork that is in the prosecutor's file. Defense attorneys have the opportunity to set up an appointment and to peruse the file to ascertain that nothing has been missed in the copying process. Typically, defense attorneys in Washoe County request to review the prosecutor's file in murders and other major offenses, but they have the opportunity in all cases.

Continuing, Mr. Greco said in the typical capital murder case where a defendant is usually indigent and represented by the Washoe County Public Defender or by private counsel appointed by the court and subsidized at state expense, the defendant receives hundreds, and sometimes thousands, of pages of police reports and statements and dozens of taped interviews at absolutely no cost to the defense. In contrast, the defense attorneys turn over nothing or few pages of discovery. When they do turn over discovery, it is on peripheral matters such as reports from mental health experts.

Referring to remarks made by Mr. Pescetta, Mr. Greco agreed that many issues concerning requirements of defense attorneys to turn over discovery documents have not been litigated because the state has no rights of appeal. In Washoe County, the district attorney's investigator conducts a police file comparison. The investigator physically carries the district attorney's file to the police department records unit and compares the contents of the two files page-by-page to ensure that the police have not accidentally failed to provide every report and witness statement to the prosecutor. In his experience, Mr. Greco said the district attorney receives 99 percent of the information in the police file.

Assemblyman Anderson asked for clarification that the district attorney compares its file to that of the police investigator and then the district attorney's file is copied for the defense. Mr. Greco disclosed that discovery in Washoe County goes well beyond what is required by Nevada statutes (NRS 174.233 through NRS 174.295 "Discovery and Inspection"). Washoe County turns over all witness interviews, statements, and tapes, whether or not the prosecution is planning to use them at trial. Since it can never be predicted with 100 percent certainty how a trial will progress, the safe policy and that of Washoe County is to simply turn over all materials from the police file.

The *Brady* decision places additional requirements on the prosecutor to turn over exculpatory materials within the state's possession, which includes not only evidence that is exculpatory on its face, but also other items that might lead to other exculpatory evidence or that could impeachment testimony. So, if a police officer learns that a particular witness who provided key testimony is known in his respective community as a pathological liar, that information is provided to the prosecutor. The prosecutor must provide that information to the defense even if not in report form. Mr. Greco concluded that occasionally information is found during the course of preliminary hearing or pretrial interviews that is *Brady* material and could be used to impeach a witness' statement. Once that is learned, it must be turned over to the defense.

Chris Laurent

Chris Laurent, previously identified on page 19 of these minutes, noted that Clark County has a similar open file policy to Washoe County. There is a problem with institutional controls. The foundation of the *Kyles* decision is the mistaken impression that the district attorney has power over the police department, which is not true. There are times when the district attorney does not receive all the documents, because they do not have control over them. An initial packet is released at indictment, but the investigation continues. Clark County is in the process of developing an imaging system where all documents will be entered providing "electronic" discovery and tracking of released materials.

Chairwoman Leslie asked if there are any significant differences between Clark County's and Washoe County's open file policies. Mr. Laurent said Washoe County allows its investigator to conduct the file comparison; in Clark County, the district attorney must review the file with the homicide detectives. Referring to Mr. Pescetta's discussion of the Conduct Adjustment Board (CAB) reports maintained by the jail, Mr. Laurent said Clark County district attorneys usually do not receive those reports, although they are in the custody of Las Vegas Metropolitan Police Department. Clark County may call a snitch witness but may not have the CAB reports. Mr. Laurent indicated it was his understanding that Mr. Pescetta was suggesting that prosecutors be required to determine whether the CAB reports contain information that should be provided to the defense during the discovery phase of the proceeding.

Referring to Mr. Pescetta's recommendation, Chairwoman Leslie asked if Clark County had any reaction. Mr. Laurent said when a rule is stipulated concerning complete open discovery, the district attorneys will be held accountable if a certain amount of information is not provided. Clark County attempts to provide all information in its possession. If information is inadvertently missed, it is questioned as to whether the outcome would have been different. However, if there is a new rule and the defense is not required to turn over anything, there is little or no recourse for the prosecution. Discovery should apply to both sides. In Mr. Laurent's view, the recommendation may not change current procedures but it could possibly cause more problems. In closing, Mr. Laurent said there is no central gathering of information—no clearinghouse where all the documents are located.

Daniel J. Greco

Daniel J. Greco, previously identified on page 30 of these minutes, commented that Washoe County already has an open file policy, where everything except work product may be reviewed. Work product documents are protected by statute. He said if the defense attorney does not review the file and accepts the discovery clerk's paperwork, it does not mean there is a problem or defect in the system.

Ralph Baker

Ralph Baker, criminal defense attorney, Las Vegas, expressed his opinion that the discovery laws need to be strengthened. In an adversarial process, the desire to win impacts the search for justice, clouds judgment, and influences the decisions made. Mr. Baker remarked that the open file policy is not codified; it is left to interpretation. He disclosed instances in cases he defended where discovery was not fulfilled, even with court orders.

Assemblyman Anderson asked how strengthening the discovery laws would affect instances of noncompliance. Mr. Baker said if the definition of due diligence could be strengthened, the district attorney would have an obligation to review the detective's file. If the burden were placed on the district attorney to obtain information from all the police divisions, those documents would be found. Assemblyman Anderson asked why the district attorney would not want to prepare as strong a case as he possibly could. He commented that there is not a high level of trust among any group of lawyers. Mr. Baker admitted it is an adversarial system and there is no trust among lawyers. That is

precisely why such a law is necessary.

Gary Halstead

Gary Halstead, Chief Appellate Deputy District Attorney, Office of the Washoe County District Attorney, Reno, contradicted statements made by Mr. Baker. He said he is familiar with one of the cases discussed and that Mr. Baker appears unaware of Washoe County's procedures.

PUBLIC TESTIMONY

Richard P. DiMare

Richard P. DiMare, private citizen, Sparks, Nevada, spoke on the death penalty, mental retardation, and victims' rights. He read from a prepared statement and provided two sets of documents for the subcommittee's review.

Exhibit BB consists of a packet of materials including the following documents:

1. A prepared statement read into the record by Mr. DiMare;

2. A copy of the oral arguments on Case #00-8452, *Daryl Renard Atkins v. Virginia*, February 20, 2002, Washington, D.C., in the Supreme Court of the United States;

3. A copy of a document titled "State Execution Rates (as of April 10, 2002)" taken from the Death Penalty Information Center Internet site http://www.deathpenaltyinfo.org;

4. A copy of a document titled "Number of Executions by State Since 1976" taken from the Death Penalty Information Center Internet site http://www.deathpenaltyinfo.org;

5. A copy of a document titled "Executions by State" taken from the Death Penalty Information Center Internet site http://www.deathpenaltyinfo.org;

6. A copy of a document titled "State By State Death Penalty Information" taken from the Death Penalty Information Center Internet site http://www.deathpenaltyinfo.org; and

7. A copy of a document titled "Information Topics" taken from the Death Penalty Information Center Internet site http://www.deathpenaltyinfo.org.

Exhibit CC consists of a packet of materials titled "Crime, Death Penalty and Victims Rights" and includes the following:

1. A document titled "Source Documents";

2. A document titled "Crime Statistics";

3. An Internet document titled "Death Penalty and Sentencing Information in the United States," by Dudley Sharp, dated October 1, 1997, accessed from the Internet site http://www.prodeathpenalty.com/dp.html;

4. An Internet document titled "Criminal Sentencing Statistics," accessed from the U.S. Department of Justice, Bureau of Justice Studies Internet site www.ojp.usdoj.gov/bjs;

5. An Internet document titled "Federal Justice Statistics," accessed from the U.S. Department of Justice, Bureau of Justice Studies Internet site www.ojp.usdoj.gov/bjs;

6. A copy of a page from the "Citizens Against Homicide" newsletter dated January 2001;

7. A copy of a news release regarding New Jersey Assembly Bill 1934 titled "Acting Governor DiFrancesco Signs

Bill Changing Statute of Limitations in Wrongful Death Cases," dated November 17, 2000, reprinted from the New Jersey Senate Republicans Internet site www.senatenj.com; and

8. A copy of a document titled "Nevada Crime Rates 1960—2000," taken from the Rothstein Catalog on Disaster Recovery.

Exhibit DD, a memorandum dated April 18, 2002, from Wayne F. Smith, Executive Director, Campaign for Criminal Justice Reform, Washington, D.C., was provided by Nicolas C. Anthony, Senior Research Analyst, Research Division, Legislative Counsel Bureau, Carson City, without remarks.

Nancy Hart

Nancy Hart, Nevada State Death Penalty Abolition Coordinator for Amnesty International and Acting Chairwoman of the Nevada Coalition Against the Death Penalty, Reno, provided the subcommittee with a document titled "Nevada Coalition Against the Death Penalty: Summary of Recommendations" (Exhibit EE), which included a prepared statement that was read into the record. Ms. Hart reported that the Coalition opposes the death penalty. She said the death penalty is too flawed to be fixed and should be abolished. If the Legislature is not willing to abolish the death penalty, she recommended a moratorium on executions while an independent commission with sufficient resources conducts an in-depth study of the system. Continuing, Ms. Hart commented that if the Legislature is not ready to impose a moratorium or fund a comprehensive study, the Coalition supports the reforms set forth in Exhibit EE on the following topics:

- Defendants with mental retardation;
- Juveniles;
- Judicial functions and three-judge panels;
- Aggravators and mitigators;
- Rules pertaining to procedure and argument;
- Racial bias;
- Competency of counsel, funding of counsel, adequacy of resources for defendants;
- Discovery;
- Appeals process and error rates;
- Juror understanding of the law, jury instructions, jury selection; and
- Deoxyribonucleic acid (DNA) testing.

In closing, Ms. Hart said that other reforms are included in the document (Exhibit EE), but those stated require immediate attention.

Assemblyman Nolan asked for clarification regarding an additional, sufficiently funded, more in-depth, highly staffed committee. He questioned what additional information could be brought before that committee that was not brought before the subcommittee. Ms. Hart referred to the Illinois Governor's Commission on Capital Punishment, which was an independent commission of a cross section of people who came from different disciplines within the criminal justice system—not legislators. The length of the study was almost two years, it had numerous staffers, and it was a highly resourced effort. She commended the subcommittee on its efforts during this interim but anticipated testimony from a wider variety of people with a more in-depth study.

Elmer R. Rusco

Elmer R. Rusco, retired Professor of Political Science, University of Nevada, Reno, and board member of the Nevada Coalition Against the Death Penalty, Reno, submitted two documents without testimony:

1. A memorandum dated April 18, 2002, to the Legislative Commission's Subcommittee to Study the Death Penalty and Related DNA Testing, in opposition to the death penalty (Exhibit FF); and

2. A document dated August 27, 1996, titled "An Outline of Capital Punishment in Nevada," by Guy Louis Rocha, Nevada State Library and Archives, outlining 68 executions in Nevada from 1861 to 1996.

Chairwoman Leslie said the final meeting of the subcommittee was originally scheduled to be held on June 6, 2002, but may be postponed a week. She indicated that the subcommittee members would be polled to verify availability for possible dates. The final meeting will be the subcommittee's work session when the members will vote on recommendations to be included in the final report, which will be presented to the full Legislature next session. Chairwoman Leslie asked all subcommittee members to attend the meeting in Carson City.

Addressing the audience, Chairwoman Leslie clarified that there will not be any regular public testimony during the work session, although the subcommittee reserves the right to call witnesses to clarify any issues under discussion.

ADJOURNMENT

There being no further business, the meeting was adjourned at 3:45 p.m.

Exhibit HH 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 copy of the written remarks of Brian Lahren, Ph.D., Executive Director, Washoe Association for Retarded Citizens, Reno, Nevada, provided by Dr. Lahren.

Exhibit B is a copy of the written remarks of David Ward, Board Member, Washoe Association for Retarded Citizens, and Vice Chair of Nevada's Commission on Mental Health and Developmental Services, Reno, Nevada, provided by Mr. Ward.

Exhibit C is a written copy of the prepared testimony of W. Larry Williams, Ph.D., Associate Professor, Behavior Analysis Program, University of Nevada, Reno, of Reno, Nevada, provided by Professor Williams.

Exhibit D is a copy of a document titled "Death Penalty Attitudes" dated July 2000, prepared for The Coalition of Arizonans to Abolish the Death Penalty, by the Behavior Research Center, Phoenix, Arizona, provided by Richard L. Siegel, Ph.D., Professor of Political Science, University of Nevada, Reno, and President of the American Civil Liberties Union-Nevada, Reno, Nevada.

Exhibit E is a memorandum dated April 15, 2002, to the Legislative Commission's Subcommittee to Study the Death Penalty and Related DNA Testing, from Richard L. Siegel, Ph.D., Professor of Political Science, University of Nevada, Reno, and President of the American Civil Liberties Union-Nevada, Reno, Nevada, provided by Professor Siegel.

Exhibit F is a copy of a Human Rights Watch publication dated March 2001 titled "Beyond Reason: The Death Penalty and Offenders With Mental Retardation," provided by Nicolas C. Anthony, Senior Research Analyst, Research Division, Legislative Counsel Bureau, Carson City, Nevada.

Exhibit G is a memorandum dated April 15, 2002, to the Legislative Commission's Subcommittee to Study the Death Penalty and Related DNA Testing from Michael Pescetta, Assistant Federal Public Defender, Office of the Federal Public Defender, District of Nevada, Las Vegas, Nevada, in his capacity as a private citizen.

Exhibit H consists of the following two newspaper editorials:

1. "Bar Execution for Mentally Retarded," which appeared in the April 4, 2001, edition of the *Reno Gazette-Journal;* and

2. "Executing a Retarded Killer," which was published in the May 7, 2001, edition of the *Las Vegas Review-Journal*.

These documents were provided by Nancy Hart, Nevada State Death Penalty Abolition Coordinator for Amnesty International and Acting Chairwoman of the Nevada Coalition Against the Death Penalty, Reno, Nevada.

Exhibit I is a copy of a document titled "Mental Retardation and the Death Penalty," provided by Nicolas C. Anthony, Senior Research Analyst, Research Division, Legislative Counsel Bureau, Carson City, Nevada.

Exhibit J is a reprint of a *New York Times* Internet article dated February 20, 2002, titled "When Guilt Is Beyond Understanding," written by Morgan Cloud and George Shepherd, professors at Emory University School of Law, provided by Nancy Hart, State Death Penalty Abolition Coordinator for Amnesty International and Acting Chairwoman of the Nevada Coalition Against the Death Penalty, Reno, Nevada.

Exhibit K is an outline of the testimony of Mark Blaskey, Chief Deputy Public Defender, Clark County Public Defender's Office, Las Vegas, Nevada, provided by Mr. Blaskey.

Exhibit L consists of an outline of the testimony of Mary E. Berkheiser, Associate Professor of Law, William S. Boyd School of Law, University of Nevada, Las Vegas, of Las Vegas, Nevada, together with the following documents:

1. "(Im)maturity of Judgment in Adolescence: Why Adolescents May Be Less Culpable Than Adults," written by Elizabeth Cauffman, Ph.D. and Laurence Steinberg, Ph.D., *Behavioral Sciences and the Law*, Chapter 18, pp. 741-760 (2000);

2. "The Evolution of Adolescence: A Developmental Perspective on Juvenile Justice Reform," written by Elizabeth S. Scott and Thomas Grisso, Northwestern University School of Law, for the Symposium on the Future of the Juvenile Court, *Journal of Criminal Law and Criminology*, 1997;

3. An excerpt from *Youth on Trial: A Developmental Perspective on Juvenile Justice*, Chapter 10 titled "Penal Proportionality for the Young Offender: Notes on Immaturity, Capacity, and Diminished Responsibility," written

by Franklin E. Zimring; and

4. An excerpt from *Youth on Trial: A Developmental Perspective on Juvenile Justice*, Chapter 11 titled "Criminal Responsibility in Adolescence: Lessons From Developmental Psychology," written by Elizabeth S. Scott.

Exhibit M is a copy of the testimony of Elizabeth M. Tully, M.D., Medical Director, Desert Willow Treatment Center, Southern Nevada Child and Adolescent Services, Division of Child and Family Services, Department of Human Resources, Las Vegas, Nevada, provided by Dr. Tully.

Exhibit N is a copy of a document titled "The Juvenile Death Penalty Today: Death Sentences and Executions for Juvenile Crimes, January 1, 1973—December 31, 2001," with the latest corrections and changes entered on March 8, 2002, written by Victor L. Streib, Professor of Law, The Claude W. Pettit College of Law, Ohio Northern University, <http://www.law.onu.edu/faculty/streib/juvdeath.htm> (April 9, 2002), provided by Nicolas C. Anthony, Senior Research Analyst, Research Division, Legislative Counsel Bureau, Carson City, Nevada.

Exhibit O is a copy of a document dated April 2002 titled "Juvenile Death Penalty, History and Analysis," prepared by the Juvenile Death Penalty Initiative, provided by Nicolas C. Anthony, Senior Research Analyst, Research Division, Legislative Counsel Bureau, Carson City, Nevada.

Exhibit P is a written copy of the testimony of Richard C. Dieter, Executive Director, Death Penalty Information Center, Washington, D.C., provided by Professor Dieter.

Exhibit Q is a report dated October 1992 by the Death Penalty Information Center titled "Millions Misspent, What Politicians Don't Say About the High Costs of the Death Penalty," provided by Nicolas C. Anthony, Senior Research Analyst, Research Division, Legislative Counsel Bureau, Carson City, Nevada.

Exhibit R is an Internet document titled "Costs of the Death Penalty," Death Penalty Information Center <http://www.deathpenaltyinfo.org/costs2.html> (April 8, 2002), provided by Nicolas C. Anthony, Senior Research Analyst, Research Division, Legislative Counsel Bureau, Carson City, Nevada.

Exhibit S is a document published in the January 2000 edition of *The Advocate* titled "Cost, Deterrence, Incapacitation, Brutalization and the Death Penalty, the Scientific Evidence, Statement Before the Joint Interim Health and Welfare Committee," written by Gary W. Potter, Ph.D., Department of Justice and Police Studies, Eastern Kentucky University, provided by Nicolas C. Anthony, Senior Research Analyst, Research Division, Legislative Counsel Bureau, Carson City, Nevada.

Exhibit T is a March 8, 1992, *Dallas Morning News* article titled "Executions Cost Texas Millions," provided by Nicolas C. Anthony, Senior Research Analyst, Research Division, Legislative Counsel Bureau, Carson City, Nevada.

Exhibit U is a Duke University news release dated May 27, 1993, titled "Study Finds Each Death Penalty Costs North Carolina More Than $250,000," provided by Nicolas C. Anthony, Senior Research Analyst, Research Division, Legislative Counsel Bureau, Carson City, Nevada.

Exhibit V is a document dated July 2001 titled "The Budgetary Repercussions of Capital Convictions," written by Katherine Baicker, National Bureau of Economic Research, provided by Nicolas C. Anthony, Senior Research Analyst, Research Division, Legislative Counsel Bureau, Carson City, Nevada.

Exhibit W is an undated white paper titled "The High Costs of the Death Penalty," prepared by the American Civil Liberties Union, Capital Punishment Project, provided by Nicolas C. Anthony, Senior Research Analyst, Research Division, Legislative Counsel Bureau, Carson City, Nevada.

Exhibit X is a memorandum dated April 18, 2002, from Larry Struve, Religious Alliance in Nevada, Reno, Nevada, to the Legislative Commission's Subcommittee to Study the Death Penalty and Related DNA Testing, provided by Mr. Struve.

Exhibit Y is a memorandum dated April 15, 2002, from Maizie W. Pusich, Chief Deputy Public Defender, Washoe County Public Defender's Office, Reno, Nevada, to the Legislative Commission's Subcommittee to Study the Death

Penalty and Related DNA Testing, provided by Ms. Pusich.

Exhibit Z is a copy of the Opinion in the case *Domingues v. State,* 112 Nev. 683, 917 P.2d 1364 (1996) reprinted from the Official Nevada Law Library on April 16, 2002, provided by Chris Laurent, Chief Deputy District Attorney, Office of the Clark County District Attorney, Las Vegas, Nevada.

Exhibit AA is a memorandum dated January 24, 2002, from Michael Pescetta, Assistant Federal Public Defender, Office of the Federal Public Defender, District of Nevada, Reno, Nevada, to the Legislative Commission's Subcommittee to Study the Death Penalty and Related DNA Testing regarding discovery issues, together with attachments from the federal habeas case of *Emil v. McDaniel*, United States District Court for the District of Nevada, Case No. CV-N-00-654f-DWH(VPC), including the motion to conduct discovery, the reply, and the court's order granting discovery.

Exhibit BB includes a packet of materials provided by Richard P. DiMare, Sparks, Nevada, including the following documents:

1. A prepared statement read into the record by Mr. DiMare;

2. A copy of the oral arguments on Case #00-8452, *Daryl Renard Atkins v. Virginia*, February 20, 2002, Washington, D.C., in the Supreme Court of the United States;

3. A copy of a document titled "State Execution Rates (as of April 10, 2002)" taken from the Death Penalty Information Center Internet site http://www.deathpenaltyinfo.org;

4. A copy of a document titled "Number of Executions by State Since 1976" taken from the Death Penalty Information Center Internet site http://www.deathpenaltyinfo.org;

5. A copy of a document titled "Executions by State" taken from the Death Penalty Information Center Internet site http://www.deathpenaltyinfo.org;

6. A copy of a document titled "State By State Death Penalty Information" taken from the Death Penalty Information Center Internet site http://www.deathpenaltyinfo.org; and

7. A copy of a document titled "Information Topics" taken from the Death Penalty Information Center Internet site http://www.deathpenaltyinfo.org.

Exhibit CC includes a packet of materials titled "Crime, Death Penalty and Victims Rights," provided by Richard P. DiMare, Sparks, Nevada, including the following documents:

1. A document titled "Source Documents";

2. A document titled "Crime Statistics";

3. An Internet document titled "Death Penalty and Sentencing Information in the United States," by Dudley Sharp, dated October 1, 1997, accessed from the Internet site http://www.prodeathpenalty.com/dp.html.

4. An Internet document titled "Criminal Sentencing Statistics," accessed from the U.S. Department of Justice, Bureau of Justice Studies Internet site www.ojp.usdoj.gov/bjs;

5. An Internet document titled "Federal Justice Statistics," accessed from the U.S. Department of Justice, Bureau of Justice Studies Internet site www.ojp.usdoj.gov/bjs;

6. A copy of a page from the "Citizens Against Homicide" newsletter dated January 2001;

7. A copy of a news release regarding New Jersey Assembly Bill 1934 titled "Acting Governor DiFrancesco Signs Bill Changing Statute of Limitations in Wrongful Death Cases," dated November 17, 2000, reprinted from the New Jersey Senate Republicans Internet site www.senatenj.com; and

8. A copy of a document titled "Nevada Crime Rates 1960—2000," taken from the Rothstein Catalog on Disaster Recovery.

Exhibit DD is a memorandum dated April 18, 2002, to the Legislative Commission's Subcommittee to Study the Death Penalty and Related DNA Testing, from Wayne F. Smith, Executive Director, Campaign for Criminal Justice Reform, Washington, D.C., provided by Nicolas C. Anthony, Senior Research Analyst, Research Division, Legislative Counsel Bureau, Carson City, Nevada.

Exhibit EE is a document titled "Nevada Coalition Against the Death Penalty: Summary of Recommendations," provided by Nancy Hart, Nevada State Death Penalty Abolition Coordinator for Amnesty International, and Acting Chairwoman of the Nevada Coalition Against the Death Penalty, Reno, Nevada.

Exhibit FF is a memorandum dated April 18, 2002, from Elmer R. Rusco, retired Professor of Political Science, University of Nevada, Reno, and board member of Nevada Coalition Against the Death Penalty, Reno, Nevada, to the Legislative Commission's Subcommittee to Study the Death Penalty and Related DNA Testing, provided by Mr. Rusco.

Exhibit GG is a document dated August 27, 1996, titled "An Outline of Capital Punishment in Nevada," by Guy Louis Rocha, Nevada State Library and Archives, provided by Elmer R. Rusco, retired Professor of Political Science, University of Nevada, Reno, and board member of the Nevada Coalition Against the Death Penalty, Reno, Nevada.

Exhibit HH is the "Attendance Record" for this meeting.

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