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MEMORANDUM

Date: February 6, 2003
To: Honorable Bernie Anderson
Chair, Assembly Committee on Judiciary
Honorable Sheila Leslie
Chair, Legislative Commission's Subcommittee to Study the Death Penalty
From: Michael Pescetta
Re: AB 13 § 3

On January 31, 2003, the Nevada Attorney General released the racial profiling study mandated by AB 500 of the 71st Legislative Session. Richard C. McCorkle, Ph.D., A.B. 500 Traffic Stop Data Collection Study: A Summary of Findings (January 29, 2003). Based on analysis of data collected by law enforcement agencies, the study concludes that there is evidence of disparities in the rate at which minority drivers, particularly African-Americans, are stopped by police. *Id.* at vi-vii. It is of particular interest that African-Americans are stopped proportionately more often than whites, and subjected to handcuffing and search more often than whites, but they have a lower incidence of seizures of contraband than whites. *Id.* at vii. These statistics suggest that the amount of time spent on stopping African-Americans who turn out not to be carrying contraband diverts attention from whites who are carrying contraband. I suggest that the disproportionate number of African-Americans on Nevada's death row (approximately 40%) may be the result of a similar phenomenon, that is, a greater focus on obtaining the maximum sentence when the defendant is African-American (or when the victim is white), while similar cases involving white defendants (or African-American victims) are not prosecuted as harshly.

I suggest that these data from the profiling study emphasize the need for the data collection provided for by section 3 of AB 13. Public confidence in the fair administration of the death penalty can be achieved only if the apparent racial disparities (including the disparities resulting from the cases in which the death penalty is not sought) can be explained rationally; and there is no reason to believe that the death penalty system is any more immune from the effects of race than any other aspect of the criminal justice system. We do not have the data to conduct that analysis now. As you are aware, a similar data reporting provision was proposed by the Fondi Commission and was briefly enacted as part of Supreme Court Rule 250 in 1999, but, at the request of prosecutors, the provision was removed before it ever took effect. Unlike the profiling study, the proposed provision in section 3 of AB 13 does not require prosecutors' offices to gather information that is not already available to them, but only to report information that they already possess; and I suggest that the profiling study adds support to the decision of the Legislative Commission's Subcommittee to propose this provision.

ASSEMBLY JUDICIARY

DATE: 2/12/03 ROOM 3138 EXHIBIT

SUBMITTED BY: Michael Pescetta

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