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## JUVENILE DEATH PENALTY TESTIMONY

Good morning, Chairwoman Guinchiliani and other distinguished Committee members.

My name is Mary Berkheiser. I am a professor at the William S. Boyd School of Law at UNLV and I'm pleased to be here today.

I have listened with great interest to the prior testimony, and I know you have as well. I'll keep my remarks brief and limit them to a single subject related to adolescent development and behavior not touched on (or discussed at any length) by my colleagues here today. That subject is the group nature of adolescent crime and the critical role of peer or adult influence in adolescent criminality, including capital murder.

Did you know that most adults commit crimes alone, but that the reverse is true for adolescents? It's true.

- ▶ Studies dating from the 1920s reveal that, in two-thirds or more of adolescent crimes, the offenders are with their friends or family members.
- ▶ Adults, on the other hand, commit crimes with others only 20% of the time.

And these numbers hold true for the juvenile offenders on death row.

- ▶ By my count, there are at present 79 juvenile offenders on death row.
- ▶ Among those, 55 (or two-thirds) were convicted of crimes involving multiple offenders.
- ▶ Even among the 24 who acted alone, the nature of the crimes they committed indicates that in many, other friends or brothers, cousins or fathers were involved as instigators, eggheads, etc.

In one case, a 17 year old Philadelphia boy was teased relentlessly by two older (adult) friends of his older sister – telling the boy his girlfriend was leaving him to return to Maryland (which she was) because he wasn't "enough of a man" to be able to keep her.

- ▶ So he exercised the poor judgment typical of a teenager – especially a male teenager in love – and decided to rob a pizza deliveryman to get enough cash to convince the girlfriend to stay.
- ▶ Of course he wasn't successful. Worse yet, he ended up shooting and killing the deliveryman.
- ▶ Neither of his older "friends" was ever charged or tried in connection with the robbery or murder.

Last summer, Texas executed Napoleon Beazley and T.J. Jones, both 17 at the time of their crimes.

- ▶ Both were convicted of murder; both were with others.
- ▶ None of their co-offenders were sentenced to death – Instead, they received a term of years or life.
- ▶ Would either of these 17-year olds have committed murder alone?  
No clear answers.
- ▶ But what is true for Napoleon Beazley and TJ Jones is that they were with a group of friends who got involved in a carjacking that went bad. They didn't intend to hurt anyone, just take a car.
- ▶ Of course, they shouldn't have tried to steal a car. But are these young offenders the "worst of the worst" who deserve to receive the death penalty?

With so few juvenile offenders on death row – 79 compared to the many hundreds of adults – one may think that raising the death-eligible age to 18 is not necessary because it will have so little impact. Consider these facts, though:

- ▶ Although only 79 remain on death row, a total of 224 juvenile death sentences were imposed.

- ▶ That leaves 145 cases that have concluded.
- ▶ The vast majority of those 145 – 124 (85%) – have been reversed or commuted.
- ▶ 21 (15%) have resulted in execution. More than half of all juvenile executions (13) have been in Texas.

I don't know about any of you, but these numbers do not give me any confidence that the death penalty is being imposed with any fairness or precision. And the disparity in the sentencing of many of the co-defendants illustrates the insidious dangers of the death penalty.

- ▶ Different juries decide cases differently. On the same facts, one jury may sentence to death; another, to life, or a long term of years. Are we willing to accept this level of disparity and uncertainty, particularly for our youth?
- ▶ Worse, prosecutors are enticed to offer deals not to seek the death penalty against some co-defendants for their testimony against another. Do we want to encourage our young people to seek gain for themselves at the cost of the life of a friend or family member?
- ▶ We should not perpetuate a system that permits the lives of our youth to be used as bargaining chips.

- ▶ But that is precisely what happened to Napoleon Beazley, a first time offender. His two co-defendants, brothers, received life sentences in exchange for their testimony against Beazley. They're still living; he's dead.

In less than a week, barring an intervening commutation or stay, Oklahoma will execute Scott Hain.

- ▶ Certainly his was a truly heinous crime – killing two people by putting them in the trunk of their car and setting the car on fire.
- ▶ But Scott did not act alone. He was 17; his co-defendant was a 21-year old man with whom he had been doing drugs and committing crimes in order to buy the drugs.
- ▶ Scott's life of crime and drug abuse started with his father, who introduced him to pot at age 8 and used Scott to help him commit burglaries and thefts when Scott was in his teens. He spent time in a juvenile facility for those crimes, and when released at age 17, lived on the street, where he met his co-offender. The rest is history.

I do not mean to suggest that these young men should be excused for the crimes they were proven to have participated in, but only that the punishment should reflect their individual culpability. The continued existence of the juvenile death penalty makes that task more difficult than it needs to be, and serves no end of which we can be proud. I urge you to join the growing majority of states in the union and raise the age of death eligibility to 18.

Thank you. I've provided a copy of the current draft of the article I'm writing on group crime to the clerk. The clerk also has a copy of Professor Victor Streib's most recent comprehensive report on the juvenile death penalty, dated 12/31/02. If any of you would like a copy of either of these, please contact me and I will be glad to get them to you.