

**MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY**

**Seventy-Third Session
February 25, 2005**

The Committee on Judiciary was called to order at 8:11 a.m., on Friday, February 25, 2005. Chairman Bernie Anderson presided in Room 3138 of the Legislative Building, Carson City, Nevada, and, via simultaneous videoconference, in Room 4401 of the Grant Sawyer State Office Building, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. All exhibits are available and on file at the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Mr. Bernie Anderson, Chairman
Mr. William Horne, Vice Chairman
Ms. Francis Allen
Mrs. Sharron Angle
Ms. Barbara Buckley
Mr. John C. Carpenter
Mr. Marcus Conklin
Ms. Susan Gerhardt
Mr. Brooks Holcomb
Mr. Garn Mabey
Mr. Mark Manendo
Mr. Harry Mortenson
Mr. John Ocegüera
Ms. Genie Ohrenschall

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Assemblywoman Chris Giunchigliani, Assembly District No. 9, Clark County (part)
Assemblywoman Sheila Leslie, Assembly District No. 27, Washoe County

STAFF MEMBERS PRESENT:

Allison Combs, Committee Policy Analyst
René Yeckley, Committee Counsel
Judy Maddock, Committee Attaché

OTHERS PRESENT:

Judy Phoenix, Ph.D., Licensed Psychologist, representing the Nevada State Psychological Association
Mary Berkheiser, Ph.Ed., Co-Director, Juvenile Justice Clinic, Thomas and Mack Legal Clinic, William S. Boyd School of Law, University of Nevada, Las Vegas
JoNell Thomas, Nevada Attorneys for Criminal Justice, Las Vegas
Michael Pescetta, Private Citizen
Richard Siegel, Ph.D., President, American Civil Liberties Union of Nevada
Fritz Schlottman, Administrator, Division of Offender Management, Nevada Department of Corrections
V. Robert Payant, President of the Board of Directors, Religious Alliance in Nevada (RAIN)
Franklin M. Holzhauer, Legislative Chairman, Nevada State Council of the Knights of Columbus,
Nancy Hart, Amnesty International, USA, and the Nevada Coalition against the Death Penalty
Laura Kreidberg, Student Member, Amnesty International
David Schumann, Independent American Party
John Wagner, Burke Consortium of Carson City
Ben Graham, Legislative Representative, Nevada District Attorneys Association
Kristin L. Erickson, Chief Deputy District Attorney, Nevada District Attorneys Association and the Washoe County District Attorney's Office
Bruce Hahn, Deputy District Attorney, Washoe County District Attorney's Office, Reno, Nevada

Chairman Anderson:

[Meeting called to order. Roll called. Chairman Anderson reviewed Committee rules and expectations for those testifying.]

The first item on the agenda for today is Assembly Bill 6, which is a piece of legislation requested by Ms. Giunchigliani whom I see in the first row. Is this your document ([Exhibit B](#))?

Assembly Bill 6: Prohibits imposition of sentence of death upon person for crime committed while person was under age of 18 years. (BDR 14-124)

Assemblywoman Chris Giunchigliani, Assembly District No. 9, Clark County (part)

Yes.

Chairman Anderson:

Do you have it in electronic format?

Assemblywoman Giunchigliani:

No. I do not.

Chairman Anderson:

Members of the Committee, let me indicate that, for those of you who were with us when we did the death penalty two years ago, we had a large binder with several supplemental additions. The death penalty question itself has so many different sides to it and so many overlapping questions that, while this exhibit (Exhibit C) is relatively large, it is only a small modicum of the amount of information.

Assemblywoman Giunchigliani:

[Ms. Giunchigliani read her testimony from Exhibit B.] Assembly Bill 6 is before you today.

I once again present this Committee with the opportunity to send Assembly Bill 6 to the Senate to see if they have finally been enlightened on this issue. I sponsored this bill again, not to excuse juveniles from their actions, but rather to establish the policy that our youth are not developmentally ready to make judgments. A.B. 6 recognizes that youth who murder must serve life without parole, rather than execution. That means they will spend an eternity in prison and not be relieved from their actions through death.

I used to support capital punishment, but over the years I feel it's wrong to take another's life. The death penalty is not a deterrent, especially with youthful offenders who don't think further than today, let alone think about consequences. Anyone who has a teenager or teaches school could tell you that they do not make sound judgments.

[Assemblywoman Giunchigliani, continued.] Children under the age of 18 frequently know the difference between right and wrong and are competent to stand trial. But, because of their age and impairments, by definition, they have diminished capacities to understand and process mistakes and learn from experience, to engage in logical reasoning, to control impulses, and to understand the reactions of others. Their deficiencies do not warrant an exemption from criminal sanctions, but they do diminish their culpability. This was the point made in *Atkins v. Virginia* [536 US 304 (2002)] which banned execution of the mentally retarded. Due to the more recent scientific research, this same argument applies equally to offenders under the age of 18 years.

The American Academy of Child and Adolescent Psychiatry found that juveniles condemned to death are multiply disabled. They have several vulnerabilities—neurological impairment, psychiatric illness, cognitive deficits, and parental abusiveness, which, coupled with youth, should lead one against the death penalty. It is exactly the same issue and the same standard that applied when we eliminated the mentally retarded from being executed.

Along with everything else in the body, the brain changes significantly during adolescence. In the last 5 years, scientists found the brain developed far less than previously thought. Researchers at UCLA, Harvard Medical School, and the National Institute of Mental Health of Medicine began studies using the MRI [magnetic resonance imaging] to map the brain in children and adolescents. What they are finding is that the brain undergoes an intense overproduction of gray matter during adolescence, and then the gray matter is shed and discarded. This is referred to as “pruning.” At the same time, myelination, which makes or forms your white matter, is being processed as well. The pace and severity of these changes continue until one’s early twenties. These changes mean that the brain is still developing.

One of the doctors from a Harvard study has also found that the underdevelopment of the frontal lobe makes adolescents more prone to act with “gut instinct.” Young people have a tendency to use the part of the brain called the amygdala, which is responsible for gut reactions instead of the prefrontal cortex, which is responsible for your reasoning. Also, males use the gut or instinctual part of their brains more than females during this age of development.

[Assemblywoman Giunchigliani, continued.] It has also been found that the frontal lobe is involved in behavioral facets germane to many aspects of criminal culpability. Most relevant is that this area of the brain also controls their aggression and other impulses. There is now clear biological evidence that adolescents do not have the same ability as adults to make sound decisions and to prevent impulsive behavior.

The opposition to this bill comes from the district attorneys. They will attempt to distract you from this issue by talking about some of the horrendous crimes that have been sadly committed by some of our youth. They may give you graphic details of the Domingues case, which concerns the young man who is serving death row in Nevada while sentenced as a juvenile. They may bring up the unbelievable actions of a brother and sister in southern Nevada, who murdered and severely injured two little girls. No one who supports this legislation believes that these actions should be excused or ignored. That is why the bill assures you that they will never get out of prison. There is no possibility of parole, nor should there be. What I am asking is that you look at the science and not the emotional side of this issue.

As a society, we recognize the limitations of adolescents and restrict their right to drive, drink alcohol, smoke, vote, marry, enter into contracts, and even watch R-rated movies. That is why we have a juvenile justice system in this country. We have long recognized that juveniles differ from adults in their decision-making abilities. Yet, despite these types of laws, the U.S. remains one of the few countries in the world that still executes juveniles. The U.S. still is the only country in the world that has not ratified the U.N. Convention, which is in your packet (pages 71-75 of [Exhibit C](#)). I would urge you to make the right decision and recognize that the death penalty's deterrent value has yet to be demonstrated. Life without possibility of parole is more of a punishment than being executed and not having to think of one's actions. Again, this bill simply goes hand in glove with the bill the Legislature passed and which the U.S. Supreme Court agrees with regarding mentally retarded youngsters. I ask that you take a look at this legislation and do the right policy for the State of Nevada.

I have the science of David Fassler, M.D. contained in there ([Exhibit C](#)). Unfortunately, I was not able to fly him out as I did last session for this Committee, but we are going to bring him out at some point. In the packet,

there is scientific data to try and understand the issues between the gray and the white matter, where your decision impulse comes into play. There are more recent articles regarding how teen brains are different such as *Newsweek*, "Getting Inside a Teen Brain," facts and findings from various universities, and brain development and culpability.

[Assemblywoman Giunchigliani, continued.] In the middle of the packet (page 45 of [Exhibit C](#)), there is the number of states with no death penalty. Thirty-one states have no death penalty for juveniles. We are one of the few states that do. In the packet, there is information on the number of young people still on death row, race and gender breakdown, and who is incarcerated by state ([Exhibit C](#)). There are also public opinion polls, such as the fact that 69 percent of the population believes that we should not execute juveniles. That is just some backup information for you to read at your leisure or over the weekend when you can't get to sleep.

Assemblywoman Angle:

Could you tell us how many juveniles that we have executed under this law?

Assemblywoman Giunchigliani:

None. There is one man pending, the Domingues individual, but none have been executed.

Assemblywoman Angle:

How old is he?

Assemblywoman Giunchigliani:

He was sentenced at 16. I think that he is in his twenties.

Assemblywoman Angle:

He is on appeal, so his execution is not imminent?

Assemblywoman Giunchigliani:

His execution is imminent. It is whether or not we establish a policy in this state, for not only him, but for any others that may be coming into the system. That is the intent of the legislation.

Assemblywoman Angle:

So, you are telling me that he is on death row?

Assemblywoman Giunchigliani:

Correct.

Assemblywoman Angle:

When is his execution scheduled?

Assemblywoman Giunchigliani:

That I do not know. I am not privy to that information.

Assemblywoman Angle:

It is not scheduled, then?

Assemblywoman Giunchigliani:

I do not know. There are other states that have the ability to execute, but in Texas and in Virginia, the numbers of executions that have occurred are Texas with 29 on death row, and they have executed 13, and I forget the number for Virginia. That number is in the middle of your packet (page 46 of [Exhibit C](#)).

Assemblywoman Gerhardt:

What other countries have juvenile death penalty?

Assemblywoman Giunchigliani:

The United States, Iran, and Pakistan.

Assemblyman Conklin:

When an inmate goes to death row, are they treated differently than those that are put on life imprisonment? I believe that I know the answer to that, but if you could clarify, that would be helpful.

Assemblywoman Giunchigliani:

I am not quite sure what you are asking for. You mean are they in a segregated population?

Assemblyman Conklin:

Are they in a segregated population? It was my understanding that in some penal systems those on death row are segregated from the population and they are treated differently than those who are serving hard time for either life or long-term sentences.

Assemblywoman Giunchigliani:

I would have to verify that. However, because of the youthfulness in Nevada, we used to always just put them with the general population. Now, we segregate all youth regardless of their sentence, because it was inappropriate for them to have been commingled with the adults. I don't know about this young man; there may be other experts that could clarify that information.

Vice Chairman Horne:

Perhaps we can get Research to find out what the differences between those on death row, those serving life sentences, and those that happen to be juveniles serving life sentences or are on death row.

Assemblywoman Sheila Leslie, Assembly District No. 29, Washoe County:

I am here to support the bill. I was a co-requester with Ms. Giunchigliani. The bill was pre-filed and that is why my name is not on it. I have been asked a question by several members about why this bill was not included in the interim study on the death penalty, which we did present to this Committee last session.

I just want to point out that we did review this issue quite extensively in the interim study. It would have been in there except for one kind of unusual factor. There was a Senator on the committee that felt so strongly against the death penalty in any form, that he felt he could not vote for this bill because he felt that we were going to raise the age from 16 to 18 and that he would be saying in some way that he supported the death penalty. The Chairman of your Committee and I argued quite extensively that that would not be how his vote would be interpreted, but it was a matter of conscience and therefore the vote failed at that time. Otherwise it would have been included in the study.

I want to reemphasize what Ms. Giunchigliani said. It is a process that our country has been struggling with and our Legislature has been struggling with over the last few years. Many of us have heard hundreds and hundreds of hours of testimony and we have changed our laws in Nevada. Last session, we passed a package of death penalty reform, including the bill to eliminate it for the mentally retarded. I do see this issue as the next step. The issues are very similar. Juveniles' brains are not fully developed. The U.S. Supreme Court has this issue under advisement. I believe that, just like the mentally retarded, the U.S. Supreme Court is at some point in time, maybe as soon as today, is going to determine that it is not appropriate for any state to execute juveniles.

The other point that I would like to make is a little more personal. You will hear from the prosecutor all sorts of information about horrible, horrible crimes. I hope that you can set that aside. This issue is not about justifying those crimes

in any way. During the interim study that I chaired, I had a murder in my immediate family. It was very difficult, and just this week, the murderer was found guilty of first-degree murder. He has not been sentenced yet. It is not going to be a death penalty case, but my family will be arguing for life without parole. So, I have had that experience in my immediate family, and I can tell you that it has not changed my mind one bit. Even when the murder happened, there is just no question in my mind that taking a life is wrong.

[Assemblywoman Leslie, continued.] I hope that as you listen to this issue, you will keep your mind open, you will listen to the evidence that I have presented to you today, both from a moral standpoint and, on this particular bill, from a science standpoint. Listen carefully, set aside the grisly aspects of the crime, and I know that you will make the right decision.

Judy Phoenix, Ph.D., Licensed Psychologist, representing the Nevada State Psychological Association:

[Read from [Exhibit D.](#)]

The Nevada State Psychological Association is a state chapter of the American Psychological Association, a scientific and professional organization that represents 150,000 psychologists in the United States. Our views on this issue are consistent with the American Psychological Association (APA). I understand that this Committee has heard much of the information that I am going to be presenting to you two years ago by Dr. Fassler, so I will present primarily for the new members of this Committee and for the benefit of those who have heard it already but would like a review.

I am here today to help address some of the clinical and scientific issues that are relevant to the question of juvenile death sentences. As you know, 31 states and the federal government do not allow the execution of people who were under the age of 18 at the time of an offense. Today, Nevada has an important opportunity to join this growing consensus.

We have long recognized in law and in society that adolescents do not function as well as adults in regard to decision-making, judgment, emotional control, considering the consequences of their behavior, and being easily swayed by peers. We have recognized these differences by establishing minimum ages for the exercise of certain rights, responsibilities, and independent judgments. For example, we treat juveniles differently in laws regarding voting, driving, access to alcoholic beverages, consent to treatment, and

entering military service. What scientists have discovered in the last six years is that one reason for these differences in functioning is that the teenaged brain functions in fundamentally different ways than the adult brain.

[Judy Phoenix, continued.] Adolescence can be a time of particular difficulty and turbulence. If you have contact with adolescents you know how their growth and maturation are seldom coordinated. One minute they are the epitome of reason and good sense; the next, they appear to be functioning much like a two-year-old—only bigger and louder. They grow physically, becoming physically mature in the way they look, but they are far from mature in their ability to control their impulses and emotional reactions. They do not reason and make logical decisions in the way an adult can. We can all think of the ways in which a usually responsible and bright teenager can get into trouble.

So, what is happening from a neuro-developmental perspective, by which I mean, what's actually going on physically inside the brain of a 16- or 17-year-old?

Research has shown that adolescence is a very active time of growth and development in the physical brain. The most important developments occur in regions of the brain that are important in long-term planning, regulation of emotion, impulse control, and the evaluation of risk and reward. There is a rapid growth of gray matter, the part of the brain that does the thinking, then a gradual pruning of gray matter that isn't used. At the same time, there is an increase in myelination, the white matter of the brain that is the interconnection between brain cells and that makes the brain's operation more precise and efficient. This does not mean, however, that the adolescent brain is a bigger, better-functioning model. It is, indeed, bigger. But its efficiency is hampered by rapid growth without integration.

The frontal lobe is the CEO of the brain, the place where planning, impulse control, and reasoning are managed. The greatest changes are noted between the frontal lobes of teens and young adults. What we now know is that all the functions of the frontal lobe are continuing to develop during adolescence and are not mature until the early twenties.

[Judy Phoenix, continued.] At the same time, probably because of the enormous changes going on in the frontal lobes, teens tend to process emotion in a different part of the brain than adults do. Teens seem to process emotion almost entirely at the level of the amygdala, a primitive brain center that is responsible for gut reactions, including fear and aggressive behaviors, without the impulse control, planning, and reasoning that the frontal lobe provides. Adults, on the other hand, process emotional information more in their frontal lobes, the CEO, the part of the brain, which develops later and helps us control our emotions and modify our actions and responses. What does this mean? For example, when looking at a picture of a person's face that adults identified as expressing fear, teens answered "shocked, surprised, and angry." That is, their "guts" identified the expression of emotion quite differently than did adults.

These tremendous changes in the neuropsychological person have an enormous effect on the psychosocial maturity of adolescents compared to adults. Looking at studies of behavior and emotion we see the results of the changes in brain structure. Here is what we know in four key areas:

1. Teens are very susceptible to peer influence. This increases between childhood and early adolescence and seems to peak at around age 14. Peer influence may be direct: "My friends tell me I should act in this way," or indirect: "If I don't act this way, I'm afraid my friends will reject me."
2. Adolescents do not rate risk in the same way as adults do. Teens tend to be driven more by rewards than by risks. They place less weight on risk than reward when making decisions. In addition, they generally make riskier decisions in groups than they do alone.
3. Teens pay more attention to the near future than the more distant future. Orientation to the future develops gradually from childhood on. Adolescents tend to discount the future more than adults do and to weigh short-term consequences of decisions more heavily in making choices.
4. Adolescents are more impulsive and have more difficulty managing their emotions than adults. Impulsiveness increases between middle adolescence and early adulthood and declines

thereafter. Gains in self-management skills take place across adolescence. Teens have more rapid and more extreme mood swings, and more difficulty regulating moods, impulses, and behavior than do adults.

[Judy Phoenix, continued.] In summary, from a scientific standpoint, it is quite clear that adolescents are biologically and developmentally different than adults. There are several specific differences between adolescents and adults in brain development and brain function. Teens think and reason differently than adults. There are also clear differences in psychosocial functioning. They are more impulsive, more likely to ignore risk in favor of reward, have less emotional control, and do less planning.

At the same time, their development is not finished. They are continuing to grow both neurologically, socially, and emotionally. They are still receptive and responsive to intervention and rehabilitation.

You have the opportunity to make a statement that the citizens of Nevada will not execute people for crimes committed as juveniles. I urge you to look at the scientific research on this issue. If you do, I believe you will decide it is time to recognize that adolescents are not the same as adults, and that it is time for Nevada to join the growing list of states that have acknowledged this fact and passed legislation banning executions for crimes committed by juveniles.

Mary Berkheiser, Ph.Ed., Co-Director, Juvenile Justice Clinic, Thomas and Mack Legal Clinic, William S. Boyd School of Law, University of Nevada, Las Vegas:

[Ms. Berkheiser paraphrased her testimony from [Exhibit E.](#)]

What I have to say today are my own personal views based on my work and not the views of the University, the law school, or of the clinic itself. My comments are shaped by two aspects of my work at the law school. First, my supervision of law students in the law school's legal clinic in which we represent juveniles charged with crimes. Second, my research on juvenile justice issues and the intersection between the law and the psycho-social sciences, and, in particular, my extensive study over the past few years of juvenile offenders on death row across the country.

You have heard the testimony of Assemblywoman Giunchigliani and Dr. Phoenix, and I will try not to repeat things that they have already said. Just to

say this, we all certainly know conclusively that parts of the brain affecting judgment and decision-making are not fully developed until late adolescence and early adulthood. Why is that important, we have to ask ourselves. You have heard from Dr. Phoenix some of the things that make that important. The bottom line is that through no fault of their own, just through the fact of their immaturity, teenagers are less able to conform their conduct to requirements of the law than adults. They don't think ahead. They act impulsively. This is particularly so when they are with their friends. They want to appear fearless and strong and are preoccupied with acceptance by their peers. They take risks they would never take as adults. They are passionate, and often driven by love and loyalty to do things that adults simply will not do.

[Mary Berkheiser, continued.] It is important, too, that the ordinary incapacities of youth are complicated by other factors, especially among those convicted of crimes, including those on death row. Because there are extraordinarily high levels in the juvenile and criminal justice system of individuals who have serious diagnosed mental illnesses, organic brain damage from complications at birth, head injuries in childhood, family abuse, low I.Q. [intelligence quotient], mental retardation, and learning disabilities. I regularly see these complicating factors in the law school clinic.

Now, in the interest of full disclosure, I need to say that I do not represent juveniles charged with capital offenses. I am much more comfortable having my colleagues here, JoNell Thomas and Michael Pescetta in Carson City, do that very difficult work.

My experience representing juveniles has shown me that there is a pretty fine line between a crime that can lead to the death penalty and one that does not. Of, course, in every capital case, a person has been killed. I do not mean to minimize the significance of that loss of life at all. The fine line, though, is the circumstances of the crime itself. Very, very few juveniles set out to commit a murder. Instead, they are typically in search of cash to have fun, to buy drugs—we don't condone those activities—or they want to take a joy ride and they don't have a car of their own. They never intend for anyone to get hurt.

My research reveals that these factors exist in more than two-thirds, and perhaps as many as 80 percent, of the crimes for which juveniles have been sentenced to death.

What is it that sets capital cases apart from non-capital ones? First of all, obviously, someone is killed, but how does that happen? Typically something unexpected happens, and, as we know from the earlier testimony, everything is unexpected by a teenager because they don't think ahead. For example, a

burglary is interrupted by a person coming home in the middle of it; a store clerk resists and, perhaps, tries to get a gun away from a kid and it goes off. Juveniles will routinely say to police, "The gun just went off. I didn't know what was going on." From prison many years later they will still say that they have no idea what happened or why they did what they did.

[Mary Berkheiser, continued.] Everyday we represent clients who tell us after the fact that what they did was really stupid. They know that after the fact, but they cannot select their conduct before they act because of their impulsive nature. They just don't think.

Of course, this is not the case for all teenagers who commit crimes or who are serving death sentences. In fact, Michael Domingues, the only Nevada death row juvenile offender, does not fit the pattern I have just been talking about.

But there are a couple of points I want to make that may dispel questions or at least give you something to think about, because I can well imagine that some of you may be wondering, "What does this have to do with us, anyway?"

First, although Michael Domingues is in the minority of juvenile offenders serving death sentences, the facts established at his trial fit a pattern of a significant number of the crimes for those serving death sentences, particularly those who committed crimes alone. Juveniles tend to be passionate and exceedingly loyal to those they love. This could be a girlfriend, a buddy, or a family member, and most of the non-property crimes of those on death row across the country arose out of a threat or insult against a loved one of the defendant. There is an element of chivalry, misplaced, obviously, in these cases. That is certainly the case with Michael Domingues. That does not excuse the crime, and I certainly don't mean to imply that. No one deserves to die in the fashion that these people have died. But, does this offense of the passion of youth qualify as the worst of the worst and, therefore, deserving of the death penalty? My answer to you is no, and I believe you will determine that as people of good conscience.

The second point I want to make is about the randomness of the imposition of the death penalty. My research has revealed that, even though more than two-thirds of the crimes that were committed, or at least those that the death row inmates were convicted of, were committed with others. Yet, only 7, less than 10 percent of all the juveniles on death row have codefendants who are serving death penalties. The others are serving life imprisonment, or a term of years, and, in fact, in two cases, the other codefendant or one of the codefendants was placed on probation. You may wonder how that can be. I certainly did. I think there are several possibilities. All of these should give us

pause. Different juries decide cases differently. On the same facts, one jury may sentence a person to death; another might sentence for life or a term of years. Are we willing to accept this level of disparity and inequality—particularly for our youth?

[Mary Berkheiser, continued.] Worse yet, of course, prosecutors offer deals not to seek the death penalty against a codefendant who will testify against another. My question is, "Is that the kind of conduct we want to encourage our youth to engage in?" To seek personal gain at the cost of a family member or a friend? Also, the race or ethnicity of the defendant is another factor that we simply can't ignore. Study after study has demonstrated that the penalty is disproportionately imposed on racial minorities, and so, too, with the demeanor and appearance of juvenile defendants. Juveniles routinely appear to have no remorse, to be completely disinterested, in the courtroom or in public. As a lawyer representing these kids, and I think my colleagues would confirm this, often these same individuals will break down in tears when talking with us and will be terrified and scared to death. It's all part of the "tough guy" exterior that's a big part of our culture and part of what it is to appear "tough" to your friends.

Finally, unfortunately, the trial and sentencing processes in death cases, as in all cases, are not fail-safe. In the nearly three years that I have been studying the juvenile death row population, 16 cases have been reversed on appeal. Of those, 1 went back to trial and was acquitted, 13 received life sentences, and 2 wait for resentencing. I don't know about you, but the implications of this reversal rate are quite disturbing to me. How many more of these will be reversed, or how many won't be reversed because these young people will be executed? And, what about the four juvenile offenders who were executed during this same time period that I have been studying over the three years? They were executed in 2002. Three of those were in Texas, and, in addition to Virginia, which also has executed a fair number of juvenile offenders, the last execution actually occurred in Oklahoma.

Yes, teenagers can and do commit horrible crimes. Those crimes should not be excused by any means, but shouldn't the punishment they receive reflect their individual culpability? I urge all of you to do your part in seeing that Nevada joins the growing majority of states that prohibit the execution of those under the age of 18 by approving Assembly Bill 6.

Vice Chairman Horne:

You were citing the cases that had been repealed, and we had 13 that were resentenced to life?

Mary Berkheiser:

Thirteen were resentenced to life; two are still waiting resentencing; one was actually acquitted at a retrial.

Vice Chairman Horne:

What do you say to those who say, "That's the system working correctly"?

Mary Berkheiser:

What I say is that those are a drop in the bucket, and we cannot count on the kind of counsel that is necessary to be able to effectively raise these issues. It is foolhardy to think that we will catch the wrong ones, the wrong convictions, or the wrong death sentences, and that only those who are truly guilty of the most heinous crimes will be sentenced to death and actually executed.

Apart from that, I would just have to say that we, as a society, cannot condone killing someone as an act of the state when that person did not have the ability to control what he was doing at the time. I say "he" because there are no female juvenile offenders on death row. There have been a few in the past, four, I believe, but all of them have gotten other sentences or have, at least, gotten off death row with no executions. Perhaps my colleagues can address some of the questions having to do with the difficulties of properly representing juveniles on death row and even at the post-conviction stage.

JoNell Thomas, Nevada Attorneys for Criminal Justice, Las Vegas, Nevada:

I am appearing today as one of the few attorneys in this state who has represented a juvenile in a capital case. In that case, I represented a young man for whom we were fortunate to negotiate the case. I can't speak specifically about my conversations with him because those remain confidential, but I have consulted with a number of attorneys over the years that have represented juveniles and in defending capital cases. I believe that there are some general statements that can be made that apply to each of these cases—certainly every one that I have heard of.

The brain development issues that are presented which often lead these juvenile offenders to be charged with these offenses still exist at the time that we are trying to represent these young men in defending the charges.

There are unique complexities in capital cases that don't exist in other cases. Often these are very, very difficult to explain and to understand. I also teach at the law school [William S. Boyd School of Law, University of Nevada, Las Vegas] on a part-time basis in the "Capital Defense Clinic." I have very bright law students who sometimes struggle with some of these concepts. My students all understand them very well, but it's taken a lot of time to get there.

When you are dealing with a young person who is 16 or 17 years old, who most of the time does not have a stellar educational background, lacks strong family support, the complexities of explaining these concepts becomes all that more problematic.

[JoNell Thomas, continued.] It is also troublesome to try to explain the long-term consequences and to have an appreciation for the long-term decisions that are being made, should a plea be accepted or not, should certain courses of action be taken in a case or not. In a capital case, these are lifelong decisions made by 16- and 17-year-olds who are often not equipped to deal with understanding what the next 50 or 60 years may mean.

Unfortunately, most of these defendants don't have a strong family support system. They don't have adults in their lives whom they can turn to for competent advice other than their attorneys. They don't have people they can confide in to talk these issues out. Unfortunately, they often turn to other inmates of the detention center. They are in a unique position to be taken advantage of in that situation. Other times they may act out at the detention center because of their age, which makes them even look worse to the jury during the penalty phase. All of these make defending a capital offender who is a juvenile very difficult.

There's also a unique tension presented in this situation that is not presented in other cases. That is the tension of wanting to go to trial immediately: to let the jury see the baby-faced, with acne, immature young client versus waiting three years to get to trial to do the kind of competent representation and mitigation investigation that might need to be done in a particular case, but which comes at the cost of, now, the jury seeing a person who is not the person who was originally charged with the offense, someone who has matured probably very quickly because of the setting of the detention center and the situation he's in and spending time with lawyers all day long. That creates a really difficult situation in trying to figure out how best to represent your client.

I have represented many adults in capital cases. It's never an easy process, but representing a juvenile is truly a different beast altogether. It's a heartbreaking situation; I hope to never be in it again.

Chairman Anderson:

I will be calling on Mr. Pescetta next, an attorney specializing in Nevada death penalty cases and on legal issues such as the execution of juveniles, who was very helpful in the Interim Committee's study of criminal death penalties and the broken system itself.

Michael Pescetta, Private Citizen:

The legal context has been alluded to earlier. In international law, the juvenile death penalty has been opposed for some years now and has been viewed as abolished under the human rights treaties. Currently, only the United States and Iran execute juveniles and, if you are known by the company you keep, that is company I believe we would like to avoid. Even Pakistan has abolished the juvenile death penalty. China, which executes about 3,000 people a year, although the statistics are very difficult to come by, does not execute juveniles, having abolished that penalty in 1997. Amongst the states, as has also been alluded to, 31 states do not have the juvenile death penalty; the last two that abolished it were South Dakota and Wyoming, which are not exactly hotbeds of radicalism on these issues.

In Nevada, in the modern era of the death penalty, which is since the death penalty was reinstated in 1977, only two individuals have been sentenced to death. One of those was actually removed by the Nevada Supreme Court on the grounds that the sentence was excessive, which is a very rare occurrence in the Nevada Supreme Court. This is a very unusual penalty for juveniles and, in terms of their mental development, one that is inconsistent with their level of culpability.

As you may remember, some members of the Committee may remember in the context of the mental retardation bill that was held in the last session, I have had two mentally retarded capital clients. The parallels between the testimony of the expert, Dr. Phoenix, and Ms. Giunchigliani and the situation that I face dealing with those clients are, I think, strikingly similar.

The major one, in terms of mental retardation, is the "mask of competence," that is the desire not to appear retarded. This is something that anyone who has any contact with adolescents is aware; no adolescent wants to appear stupid or unsophisticated. In that sense it is very like retardation, and adolescents are always attempting to overstate their competence. They are always trying to fool you into believing that they understand more than they do. Also, paradoxically with that facade, they are also very easily led, even though they tend not to let on to it. Again, this is a very close parallel with people who suffer with mental retardation.

The horizon of decision-making for adolescents is very like those with mental retardation. What is before that person now is the only thing that person typically sees, and the "yes" or "no" answer that you get in response to a question is based on what that person is faced with at that moment and what that person sees as the desired response from whomever is asking.

There is, finally, the problem of distinguishing between what's important and what isn't. That is something where a mature understanding of what is important to a case or in a particular situation is the difference between people who are mentally retarded or not. It is one of the major differences, also, between people who are adolescents and those who are not. This, of course, is something that has been alluded to. This Body recognizes that the competence for the decision-making competence, the maturity of adolescents is not sufficient to allow them to participate fully as adults in terms of choosing to vote, choosing to smoke, choosing to drink alcohol, and there is no difference, I would submit, between the immaturity of those choices and the immaturity of the choice to commit an offense. I would also suggest that the only primary difference is that children grow out of this condition; people with mental retardation don't.

[Michael Pescetta, continued.] That is another consideration that people should be thinking about, which is, by the time you execute a juvenile who has committed a crime under the age of 18, you are going to be executing someone who is a different person than that person because the development of the brain that has been alluded to has not happened. When it does, when that person, in prison, gains that sort of insight, gains more maturity that eventually comes with age and with the physical development of the brain, that person will be a very different person from the person who committed the offense.

Finally, I would like the members of the Committee to consider that there are terrible crimes that are committed by juveniles, both homicides and non-homicides. I just ask you to consider that when there is a terrible crime, where there is a seemingly inexplicable, crazy sort of crime, is that an indication that that juvenile was more mature, more sensible, more in control of his/her faculties? Would that suggest what Dr. Phoenix would suggest, which is the level of immaturity in the development of that child's brain?

In Nevada, if we sentence someone who is a juvenile to death row, that person goes to death row along with everyone else. There is no segregation of individuals on death row by age. That person goes in with the same people who are facing execution.

Assemblyman Holcomb:

Has it been shown that the death penalty is a deterrent to homicide by comparing states and the number of homicides that have been committed with death penalties and the number of homicides committed in states without the death penalty? Has there been a comparison to show if this is a deterrent?

Michael Pescetta:

There are statistical studies that seem to suggest that there is no correlation between the existence of the death penalty and, for instance, the homicide rate. North Dakota and South Dakota are contiguous and close in many demographic ways and social ways. South Dakota has the death penalty; North Dakota doesn't. Their homicide rates are virtually identical. The homicide rate in states like Texas, which not only have very large death rows but have executed the majority of the people who have been executed in the country since 1976, consistently has a homicide rate that ranks in the top ten in the country. The same is true of Louisiana, which also has a very high homicide rate and executes people under the death penalty very regularly.

In terms of looking at individual states, if you look across time, there has never been any correlation in Nevada between the existence of the death penalty and the homicide rate, or the homicide rate at the time of an execution, as opposed to any other time. If you look over the last ten years, there are statistics for, roughly, the last decade; again, Texas is a state which has executed an enormous number of people, relatively speaking. Their homicide rate has declined somewhat over the last ten years. But if you look at New York, which did not have a death penalty at all until very recently, and did not have much prospect of the death penalty being reinstituted until it actually was, their homicide rate over the previous decade dropped much more than that of Texas.

Although the question is a very vexing one and people do continue to disagree about it, the statistical material that we produced, as the Chairman indicated to the Committee, suggests that there is really no demonstrable correlation between the existence of the death penalty, the number of executions under the death penalty, and either the homicide rate or the general crime rate.

Chairman Anderson:

The death penalty has not reduced the amount statistically, whether it is in your state or whether you have one or not. In the long run, it is not a deterrent. Because of the nature of the crime itself, what the penalty will be is not usually something that the offender has worried about.

Michael Pescetta:

I think that is of particular concern when you are talking about adolescents, whose planning horizon does not likely include that calculation.

Chairman Anderson:

That becomes an exacerbated issue with juveniles because of their lack of a long-range planning function and the consequences of their actions which they

rarely, if ever, weigh in. It's the reason why they see themselves as invincible, or Mr. Supermen, in all of my classes.

Assemblyman Mabey:

Is life in prison without the possibility of parole worse than the death penalty in dealing with your clients? If that's the case, do some of them wish they could just have capital punishment?

Michael Pescetta:

Unfortunately, that is a very open question. Of the ten people who have been executed in Nevada since the reinstitution of the death penalty in 1977, nine of those people have been volunteers. That is to say, people who had legal recourse gave up those in order to be executed. Some of those people, in my view, did so because they were mentally ill; some did so because of the hopelessness and despair that a sentence of life without the possibility of parole does tend to induce.

Just about any client I have ever had, both here and in California, has, at some point in the process, said, "I wish this was over. Isn't it easier to go ahead and be killed?" In general, that is a transitory thought; however, for people who are immature who suffer from mental illness that can be something that turns into an actual impulse and sometimes a plan and the actuality of being executed.

For people who have life without the possibility of parole, that is to say, those who don't have the option to say, "Please kill me," in general those people are solid citizens in the prison system, because that is where they are going to be for the rest of their lives. As to whether one is worse than the other, there are people, including some of my clients, who have, in my opinion, made themselves into completely different people than the people who actually committed the crimes, who have grown enormously and have taught me things that I would not otherwise know. I don't think anyone thinks it is a desirable situation. People who serve life without possibility of parole in Ely State Prison in Nevada are not in a country club.

Assemblyman Mabey:

With the juveniles, if they are less culpable, why don't we just give them a chance of parole later on instead of no chance of parole?

Michael Pescetta:

That is not a policy decision that I am in a position to give an opinion on. I think that having some hope is a positive thing. I think that life without the possibility of parole is a very extraordinary sentence. Compared to death, death is

different. What could happen in the future with the possibility of release would be a function of legislation that this Committee would consider.

Chairman Anderson:

I would remind Assemblyman Mabey that, when we heard the testimony two years ago and were really analyzing the overall question of the death penalty and why we were doing it as a state, it was in light of the "broken system." In light of the new DNA testing questions and in light of the overall question of the death penalty and its legitimacy, we, as public policy makers, had to take this up. This is probably, for those of us who feel very strongly about the death penalty as a separate issue, about recognizing the age question and the uniqueness of it; it is very difficult to deal with. How do you justify or give public policy a statement relative to, "This is okay," when you are looking down the road, and you see what DNA testing has done? That is a philosophical discussion.

Let me indicate to the public that we have now been hearing the positive side of the bill for a little over an hour. Of course, I want to be sure that we give those people who wish to discuss the other side of the issue ample time to do so.

It is the Chair's intent to reschedule A.B. 72, the second bill on our agenda today, to another place. If you are sitting here ready to testify on A.B. 72, please recognize that I will not be hearing that bill today.

Richard Siegel, Ph.D., President, American Civil Liberties Union of Nevada:

I have just retired so that I can finish my book on the death penalty, which is a study of the death penalty globally and in the United States. I have a two-page memo for you on public opinion ([Exhibit F](#)). I also have, as part of my presentation, two editorials, one from the *Las Vegas Review-Journal* and one from the *Reno Gazette-Journal* ([Exhibit F](#)).

On the second page of my memo on public opinion, you can see, at the top of the page, information from the last Gallup Poll, the 2002 National Gallup Poll, which dealt with the mentally retarded and juveniles. The public is opposed to the execution of both by very substantial numbers. It was approximately 81 percent opposition for the mentally retarded and 69 percent opposition for juveniles. It is almost a 3:1 opposition for juveniles.

I have also included from states' polls elements that correspond, generally, in the 60 percent to 63 percent in conservative states like Georgia and Oklahoma. There was a somewhat inconsistent poll in Arizona where only a very marginal opinion against the execution of death penalties existed. I wanted to include that and point out that the overwhelming tendency is close to a 3:1 opposition

to the death penalty, which is a very strange reality. The United States government's most unpopular policy in the world, and particularly in major tourist markets for Nevadans such as Europe, Mexico, and Canada, is the juvenile death penalty. If there is any policy that the State of Nevada could do that would get the world angry at the State of Nevada, as it is already to the state of Texas, it would be executing a juvenile. Maybe Nevadans want the Mexicans, the Canadians, and the Europeans angry at us, perhaps angry at us enough to come to Las Vegas in smaller numbers. But I don't think we really want to do that.

[Richard Siegel, continued.] The opposition to the death penalty on juveniles makes itself known in many ways. Some of you may not know that it costs between \$1 million and \$2 million to take a death penalty case from the beginning to the end. The juveniles are the least likely to end up with an execution. About 10 percent over the last 30 years have ended up with a death sentence. These are the cases that are most likely to be a complete waste of money as well as other considerations, a very substantial waste of money at that. The opposition is reflected in the editorials I have given you. You will be supported by the editorial boards of the *Reno Gazette-Journal* and the *Las Vegas Review-Journal*. That's a pretty wide spectrum if you oppose the death penalty for juveniles. There is no substantial body of opinion in the Nevada press that is looking for you to continue this.

Finally, it's terribly important that you join—the fact that this Body, the Assembly of the State of Nevada, voted for the abolition of the death penalty in 2003 will be noted by the Supreme Court of the United States when it makes its decision in June 2005, for or against the end of the death penalty for juveniles. The country will take note, if we can get both the Assembly and the Senate to do this before June. It will be a reflection. The Supreme Court is primarily looking at the trend in state legislative opinion. This is one area where you guide the Supreme Court of the United States. They may well have made up their minds already, but they may be making up their minds in a month or two. You have public opinion on your side, and you have history on your side. The death penalty is now only a policy for, basically, Asia and the United States. Latin America has essentially given it up; all of Europe has given it up except for Belarus; half of Africa has given it up. Only two or three countries have it for juveniles. There is no good reason why we should not be with the path of history.

Chairman Anderson:

Let me ask someone from the Nevada Department of Corrections. Mr. Conklin had a question earlier regarding the Department of Corrections' treatment of juveniles. Would you restate your question?

Assemblyman Conklin:

My actual question was in response to a question by my colleague. Are juveniles on death row treated differently, segregated from the population, than those juveniles whose sentence is life in prison?

Fritz Schlottman, Administrator, Division of Offender Management, Nevada Department of Corrections:

Juvenile offenders, particularly in juvenile centers, on death row are a difficult issue for the Department of Corrections. It's a difficult issue for a couple of reasons. The issues are between two ends of the spectrum. It has to do with sophistication. Is this person a threat to victimize other people, or is this person a threat to be victimized by other inmates? That leaves us with, essentially, three options to deal with housing and classification:

- If I thought the individual was relatively unsophisticated, young, and likely to be a victim, I would probably put that person in protective segregation until such time that I thought that he/she could enter the yard and handle it, or sophisticated enough to be able to handle him/herself. Depending on how young that person would be, that could be a considerable amount of time.
- We have a young adult unit at the High Desert State Prison. We have juveniles there who have committed murder. It would be possible, if I thought that the individual on death row was relatively unsophisticated enough to not be able to cope with life on death row, I would probably, as an alternative, put him at High Desert facility until such time as they were sophisticated enough. If and when we open the Southern Nevada Correctional Center and our young adult population moves to that facility, that may take away that option just because of the nature of the security and the nature of the prison.
- Death row in Ely would be the third option. I would hesitate to put a juvenile there because I know the likelihood of victimization. That is a rough crowd that hangs around there. In good conscience, it's not our policy to further victimize youth who enter our system.

Chairman Anderson:

Having been out to the Ely State Prison, I was surprised by death row there. It's a remarkably well-run and well-managed facility. It is truly a unique place to be, both its location and also the level of the sophistication of the management system. But, they are not a nice group of people.

Assemblyman Conklin:

I think there was concerns that just because we hadn't executed anybody, why, necessarily, change this law? Apparently, there is a clear distinction between

people who are on death row and people who are life-imprisoned and not waiting to be executed.

V. Robert Payant, President of the Board of Directors, Religious Alliance in Nevada (RAIN):

The Religious Alliance in Nevada has been in existence for the last ten years or so. It consists of representatives of the Episcopal Diocese of Nevada, the United Methodist Church in Nevada, the Evangelical Lutheran Church in America in Nevada, the Nevada Catholic Conference, and the Presbyterian Church, the Nevada Presbytery. This organization favors very strongly the abolition of the death penalty and, certainly, favors the bill that you are considering today. In addition to the churches that have been named as members of the RAIN alliance, there are approximately 32 religious organizations across the country, many of which have activities within this state, that favor the abolition of the death penalty as well.

You ladies and gentlemen are facing, of course, a very difficult moral, as well as legal, issue. This is a different kind of topic than most of those that you deal with. We have submitted here today a RAIN statement ([Exhibit G](#)) that was prepared and sets forth the religious traditions as to their views concerning the death penalty, most specifically, in regards to the death penalty. I know that you always have a great deal of material to read, but the four or five minutes it would take for you to read these statements of the religious organizations would be, I think, extremely valuable. I certainly am not going to take your time to read them at you. One, however, jumps out at me: the Presbyterian statement.

Presbyterians believe that the government's use of death as an instrument of justice places the State [of Nevada] in the role of God who alone is sovereign. The use of the death penalty in a representative democracy places citizens in the role of executioners.

I know that there are members of these churches as well as other very fine religious people with high moral standards who have come to a different conclusion when it comes to the death penalty. I would hope that, as this Committee considers this, will favor at least the abolishment of the death penalty as it affects juveniles.

You do have the opportunity; you or your predecessors have had the opportunity to set what amounts to ages of maturity for various things that happen. You or your predecessors, for example, have decided that we don't want to allow people to drink alcohol or possess alcohol until they have reached

the age of 21. They aren't mature enough to handle it until then. We don't allow them to marry without parental consent until they are 18 years of age, because we feel that this is necessary for them to be mature enough to enter in to such relationships. We don't allow them to vote for public officials. We don't allow them to serve on juries so, with regard to jury trials regarding juveniles, there will be no juveniles on those juries that will make those decisions. We strongly prohibit juveniles under the age of 18 years to smoke cigarettes. We don't even allow people who are 17 years old to go to most movies unless they are with a mature adult. And, yet, at least as the law is in Nevada at the present time, we are saying that people 16 years old and 17 years old may be mature enough to handle their lives facing the sovereign power of the State in a death penalty case. We urge you, very strongly, to consider the evidence and hope that you will favor this bill.

[V. Robert Payant, continued.] We had a meeting of our Board this week and reaffirmed our decision to support this legislation. Franklin Holzhauer is here.

Franklin M. Holzhauer, Legislative Representative, Nevada State Council of the Knights of Columbus:

The letter ([Exhibit H](#)) was submitted to your Committee about a week ago as I didn't know if I would be able to be here or not. It should be in your file.

Chairman Anderson:

We will attempt to find it. For those members who may not be aware, the Knights of Columbus is a men's Catholic organization who take positions on a wide variety of issues. It is a Catholic men's service organization. It has a much broader base than just that.

Nancy Hart, Amnesty International USA and the Nevada Coalition against the Death Penalty:

The coalition is a broad-based statewide organization working to end the death penalty in Nevada, and we strongly support to end the execution of juvenile offenders.

We believe it is the right thing to do, and it is the right time to do it. It is the right thing to do because, as you have heard, juvenile offenders are not the most culpable of violent criminals. As society's harshest sanction, the death penalty, if we are to have it, should be reserved for the worst of the worst, and juveniles simply cannot be said to be the worst of the worst.

It is the right thing to do because the rest of the world and, indeed, the rest of the country have all but ended the practice of executing juvenile offenders.

Nevada, as you've heard, is among a minority of states that retain the death penalty for teenagers. Only four or five nations in the world permit the execution of juveniles, and I am having distributed to you a report. I know that you already have a lot of material, but this is kind of a convenient summary of much of the information. It's called "Human Rights and Human Wrongs." The summary ([Exhibit I](#)) concerns the juvenile death penalty and has some of that information in there. Most embarrassing for me is the fact that, in the last 20 years, the United States has executed more juvenile offenders than all other nations combined.

[Nancy Hart, continued.] It is the right time to do this, because public opinion supports ending juvenile executions and nearly every major religious denomination, children's groups, and legal and medical associations oppose the practice. It's the right time to do it, because we need to be putting our valuable resources on the front end rather than spending enormous amounts of money on a small handful of cases that don't address the problem of violent crime and don't make us any safer.

We recognize that some juveniles have committed terrible crimes, and we deeply sympathize with the family members and loved ones of victims of violent crime. We know that the process of healing from such unimaginable loss is a long and difficult path. But the killing of another human being should not be part of that process.

As long as people under the age of 18 are prohibited from so many privileges and responsibilities you've heard about this morning, they should also be exempt from our most severe and permanent punishment. Voting for this legislation is the right thing to do, and it is the right time to do it.

I would also like to point out that there are a large number of people in the room representing organizations who are not going to take the time to testify, but they have signed in support of the bill. I would also like to introduce, very briefly, a member of the Amnesty International group from Reno High School. Her name is Laura Kreidberg, and she is not able to vote but she would like to express her 16-year-old opinion about this issue.

Laura Kreidberg, Student Member, Amnesty International:

I am here because I can't vote, and I want to make my opinion heard in any way that I can.

Do you remember being 16? For some of you it was longer ago than for others. When you are 16 years old, besides not being able to vote, you can't gamble, you can't drink, you can't smoke, you can't get married without your parents'

consent. You are barely old enough to have a driver's license. Adults control your life a lot. Adults make decisions for me all the time. To be here today I had to fill out a form with space for ten signatures on it to get out of school. Seven of my teachers signed, my parents had to sign it twice, and someone in the office at school signed, because they want to keep tabs on me, to know where I am always, because they think I'm not responsible enough to manage my own life to any extent at all.

[Laura Kreidberg, continued.] Adults claim, and rightly so, that they are more experienced than teenagers, and they have better judgment. It's true, because I see and know my friends and the stupid things that they do. I know the stupid things that I've done. It is really a ridiculous double standard for teenagers to be held as accountable for crimes as adults would be. That, combined with many other reasons, is why I'm opposed to the death penalty for people who committed crimes between the ages of 16 years of age and 18 years of age.

Chairman Anderson:

While I am not and have not been 16 years old for many years, I've had the great honor and privilege of standing in front of 16-year-old students for the last 34 years. I think I sometimes recognize the great adult minds that are in front of me and the great courage that they have such as appearing before a legislative body. Maturity is not a matter, necessarily, of age. However, I'm sure, as we saw in previous testimony relative to the responsibility of life experiences and being responsible for your actions, that is something that all of us worry about. I often think that the parents worry that children are going to make the same mistakes that they did. That's the greatest fear they face every day when you walk out the door. That's the reason it takes 7 signatures to get here.

Assemblywoman Ohrenschall:

I'm sorry, but I missed your full name, and what grade you are in. [Thanked the witness and complimented her on her testimony.]

Laura Kreidberg:

I am a sophomore. I am in the Honors program at Reno High School.

Chairman Anderson:

I think that we have worked our way through the majority of those people who had indicated to me and to the chief sponsor of the bill their intention to be here. Is there anyone else who feels that their particular issue and point has not been made and must get on the record in support of this legislation?

I am closing the hearing for those speaking in support of A.B. 6, and I will turn to those who may have some concerns.

David Schumann, Independent American Party:

We have just heard some excellent testimony here that shows that people under the age of 18 years are not developmentally ready to drive a motor vehicle. I can remember, half a century ago, when I was 16 years old. I did not consider myself retarded, and myelination of brain was occurring. It occurs up until your mid-twenties, and then it goes the other way. We have heard here that this all has to do with the hard-wiring of the brain. Ninety-nine and nine-tenths percent of 16-year-olds have a very good understanding of what is right. It would never enter their minds to kill someone, to go into a store and just shoot them down.

In the late 1990s, in the *San Jose Mercury News*, there was a series of news stories that would seem to suggest that the death penalty is a deterrent, because there was a long thing on gangs. They send people out purposely to kill other gang members opposing them. They had gotten into the habit there of taking kids, 14-, 15-, and 16-year-olds, to pull the trigger because they know that if an 18-year-old—the gangs are made up of mostly those over 16 years of age—does that, they might wind up being executed for this in California. They are clever enough, sophisticated enough, and psycho-socially mature enough to understand that. If they can get a 16-year-old to do the job for them, that 16-year-old won't go to the electric chair.

The notion that all of us running around here when we were 16 years old were, because our brains had not yet myelinated, that the coating on the hard wiring hadn't been applied, that we were somehow retarded. Now, I would wish for this Body to go out and quiz the 16-year-olds out there. First of all, you'll find that they do some fairly intelligent work, and by no means are they retarded. This constant comparison, because of the immaturity of the brain—there is no argument; it is not mature—that people under the age of 18 are somehow necessarily retarded; that is junk science. We have junk scientists around that can prove there's "mankind causes global warming"; the majority of atmospheric scientists are on record as saying, "That's not true." But this junk science from a tiny group still exists.

Please, when some of you were 16 years of age, you were not retarded. You were one of the 99.9 percent who would not kill somebody premeditatively like a lot of these murders are. They aren't just random acts.

Assemblyman Horne:

I don't think that the testimony was saying that immature teenagers are retarded. I think you made a huge leap there. I think it's the immaturity that people are talking about. I think that is something to keep in mind; that's the rashness, but it is not being retarded.

David Schumann:

Yes, adults also, obviously, have poor judgment. I did not say that they said they were retarded. There was a constant comparison of the mental development of retarded people with the mental development of 16-year-olds. Putting those things together made an association. I wanted to get out of that, just sever that

John Wagner, Burke Consortium of Carson City:

I wish to testify as an expert witness for being a juvenile delinquent a few years ago. At that time, we used to visit the Midnight Gas Company with our 5-gallon cans. We knew full well that, if we got caught, it was only a misdemeanor, and, at 18 years of age, any record we had would be expunged. As soon as we were getting close to 18 years of age, we were very careful with what we did. Also, these kids who commit a crime, why do they run after committing a crime when there is someone chasing them, a police officer or the owner of a store? They know they're doing wrong. As far as knowing right from wrong, you know that at a very young age. As far as a juvenile committing a murder, just because they have committed a murder doesn't mean that, automatically, you are going to get the death penalty. Only the most gross murders should really be eligible for it. I think we should leave it on the table. Just the fact that, if I do something wrong, I could get it.

A kid takes a clerk at a 7-Eleven to a back room, makes them kneel down, and shoots them in the back of the head. That's an execution-style murder and, I think, worthy of the death penalty. If they get into a struggle and the gun goes off, that's a different story completely. I just don't believe that the age of 16 years is a magic number. Why couldn't we have done what we used to do and use 14 years of age? Even that is not really a magic number. I think just about everything has been said. Mr. Schumann said a few things that I agree with such as about the magic number.

Ben Graham, Legislative Representative, Nevada District Attorneys Association:

I have the highest regard and deepest respect for the prior speakers, a number with whom I sit on Sundays in the same church pews. I count them as my friends. But, I want to remind each of us, as we are here this morning, that probably, to a soul, each one of the speakers totally opposes the death penalty under any and all circumstances. And, I respect that.

At the age of 18, I voted to repeal the death penalty in Oregon. Many of you have heard this before. You've heard that young men mature at a slower rate. My wife will assure you that it is at least 35 years of age for our grand boys.

[Ben Graham, continued.] We are not really mixing apples and oranges, but we are mixing Nevadans with Oklahomans, Texans, and Virginians. I heard that testimony from many folks, and it was kind of blurred. Remember, we are talking about Nevada. We are talking about one person in Nevada. The one thing that I did hear was, if we can leave this option on the table, that's what the District Attorneys Association is asking this Legislature to do. If the Supreme Court of the United States takes a different tack as they did with the retarded citizens, then we are certainly willing to accept that. Obviously, if this Legislature goes in that direction, we are willing to accept that as part of the Executive Branch.

It's not an eye for an eye or a tooth for a tooth. As we are aware, there are three penalties for killing someone, at least three: Life with the possibility of parole; life without the possibility of parole; and, potentially, the death penalty. The death penalty and the others only apply to first-degree, intentional killing. The statutes set forth very strict rules on what it takes to get to a first-degree killing. Then, after a guilt phase, a determination has to be made as to the penalty and, then, only under strict, strict guidelines. You can find them in your statutes under *Nevada Revised Statutes* (NRS) 200.033, which sets forth the aggravating circumstances that the state has to prove at least one or more beyond a reasonable doubt prior to a jury coming back with a death penalty.

The defendant presents mitigating circumstances, which is under NRS 200.035. One of those mitigating circumstances that the jury can say, "You know, we don't agree. We don't think the death penalty should apply to this person because of the youth. The defendant was young at the time of the crime. If the jury decides that's the case, then there is no death penalty. The catch-all on mitigating circumstances is the seventh one that simply says, ". . . any other mitigating circumstance."

The folks that spoke ahead of me talked about the heinous crimes. That's true. It is very, very rare that we would ask for a death penalty for a younger person, and, quite frankly, it's quite rare that we ask for the death penalty under any circumstance in this state. As I indicated, as a youth, I decided that the death penalty was not appropriate. With the aging process and with a little more experience in the world, I think, on occasion, the death penalty is an appropriate avenue. That's why, in good conscience, I sit here before you this morning and say, "Take a look at your statutes. I think they are fair, I think they are meted out appropriately, and the abuses that we hear about were in Texas, Oklahoma, Virginia, and they really aren't in this state.

In the audience we do have Steve Owens, who is one of our senior deputies. He is not anticipating speaking. He works with post-conviction relief with death

penalties. We did provide a handout ([Exhibit J](#)), more as a factual basis, on A.B. 6, which those of you here two years ago are aware.

Kristin L. Erickson, Nevada District Attorneys Association and the Washoe County District Attorney's Office:

I am here today in opposition to this very important and serious matter. With me today is Deputy District Attorney Bruce Hahn. Mr. Hahn is a member of our major violators unit in Washoe County and prosecutes murder cases, death penalty cases, and violent crimes.

Bruce Hahn, Deputy District Attorney, Washoe County District Attorney's Office:

I'll be brief. I will lay out for you our recommendations concerning whether A.B. 6 should pass or should not pass, what our rationale is for our position.

It is our recommendation to you from the Nevada District Attorneys Association that A.B. 6 not pass. What is involved here is removing a right from the people. We are not granting rights. When we consider what should be done, we believe that the people of the state of Nevada, particularly the juries that are seated, are willing and capable of making this decision for themselves, not about all juvenile offenders, but whether or not a 16- or 17-year-old, who are the worst offenders, committing the worst murders, should be even considered death-eligible. That's our rationale. We believe that people are capable of making that decision for themselves.

I have a couple of points for you to consider:

- It is, in fact, rarely sought. I can speak only from the position of Washoe County. I can't speak for Clark County. In any recent memory, which is 15 years, we can only think of 2 cases in Washoe County where we have ever exercised our discretion to even seek that option for the jury to consider. One was a matter my supervisor, Daniel Greco, prosecuted. That was the *Brandon Talbert* matter. And, the other was a case I personally handled, *Servin, Rodriguez, and Allen*, a three-defendant capital murder case. It is so rarely happening. It is our position that it really should not be so much of an issue in the sense of removing it from the people's discretion.
- The people, as Mr. Graham pointed out, are entirely free to reject this as an option already. What I would simply offer is, in the *Talbert case* that Mr. Greco handled, the jury did precisely that. They declined to exercise that option using all of the measures that were available to the defense to offer why this shouldn't occur.

- [Bruce Hahn, continued.] So, juries are not automatically biting off on whatever the district attorney recommends. They are not a rubber stamp. The people who are seated as a jury are given legal instructions that they must consider "youth" as a mitigating factor against the death penalty option. If they are even going to consider it, they must consider "youth" as mitigating against that. There are built-in mechanisms that cause our association to question if this is really appropriate and so compelling a bill as to needing to upset the delicate balance that is already in place. We don't believe so.
- In a small percentage of the eligible cases, the people of Nevada want to have the right to exercise the death penalty. That's what the people want. I can say that in the sense that I prosecuted one of those matters in the *Servin, Rodriguez, and Allen* matter. In that matter, it was extraordinary. It happened in 1998 in Sparks, Nevada. A 16-year-old, Mr. Servin, a 17-year-old, Mr. Allen, and a 19-year-old, Mr. Rodriguez, no gang affiliation, conspired ahead of time to rob and, if necessary, to kill a woman to take her money, because she had some disabilities, and some assets and money at home. What they did was to get a car, they gloved up, dressed in black, went at night, booted this woman's door, went inside, and, when they couldn't find the safe and the key, they began to torture her by cutting her neck and her chest with the edge of a knife to get her to tell where this safe was. Then, Mr. Servin shot the victim with two nonlethal wounds intentionally. Thank God, the first one she didn't feel because she was a paraplegic, in a wheelchair, and they shot her in the leg. Mr. Servin didn't register [the lack of pain] at the time. Then he shot her in a shoulder, and then put two contact wounds to the head. They got about \$80 out of it. So, when you consider the small amount of cases that there are, there are some cases where the people want that right. In that case, they chose to exercise it.

For those reasons I would invite any questions from any member of the Committee. I will do the very best I can to answer them.

Chairman Anderson:

I was under the impression that the District Attorneys Association consistently, at least the district attorney in Washoe County, asked for the death penalty in murder cases whether there were any mitigating circumstances.

Bruce Hahn:

What I can offer the members is that I have not been in every staffing that Mr. Dick Gammick [District Attorney, Washoe County, Nevada] has conducted, simply the ones I have been available for. I can indicate to all of the members that it is, in fact, carefully considered, and the deliberative process that is involved is extensive; he takes every matter very, very seriously.

Chairman Anderson:

Does he not consistently ask for the death penalty in those kinds of cases?

Bruce Hahn:

In extreme cases, he considers all of the input offered by the agencies.

Ben Graham:

I have had the experience of sitting on the Death Penalty Assessment Committee in Clark County. The vast majority of cases result in a notice that is sent out. If you have aggravating circumstances that you want the committee to consider for the death penalty, there is an assessment committee meeting. There are about a half dozen senior and some less senior prosecutors that listen to these. They are also presented with mitigating circumstances. Quite frankly, the decisions to seek the death penalty are far fewer than the decisions not to seek the death penalty.

Chairman Anderson:

I was trying to recreate my memory from last session, which was that it was consistently applied here and that was the distinct impression and was the difference between the Second and the Eighth Districts. Those are court districts. It was different in terms of the experience level of how frequently it is asked for. Of course, Mr. Hahn, from your presentation, the mitigating circumstances and those things that juries are encouraged to weigh are predetermined by this Body. The range of what juries get in front of them is really up to us as the representatives of the people. Is that not your understanding of how the whole process works? I know that you are concerned about the opportunity of the jury, and I appreciate that, but those are the opportunities that the people give them as their representatives in that particular instance is utilized. Is that not how the process works?

Bruce Hahn:

I would agree with you, sir.

Assemblyman Horne:

Can you say why this is bad public policy? Doesn't this bill simply change the punishment for juveniles? It is not eliminating it. If this bill passes, are we making us less safe?

Ben Graham:

This is a legislative decision. If the Legislature, in their wisdom, representing the will of the people decide to take this option off the table, that is certainly your prerogative and one that we will respect. It is felt, though, by the majority of the prosecutors, that this is an option that we would like to see remain available for the worst cases. We could debate the rehabilitation efforts and the deterrent issues until the second coming.

Chairman Anderson:

Are there any questions for Mr. Hahn, Mr. Graham, or Ms. Erickson? We still have one witness to hear, so I want to make sure I get to him. Is there anyone else wanting to speak on this issue who's not been heard on Assembly Bill 6? I will close the hearing on A.B. 6.

Assembly Bill 72: Increases penalty for subsequent convictions within 3-year period for use of drug paraphernalia or possession of drug paraphernalia with intent to use drug paraphernalia. (BDR 40-569)

The other bill for today is A.B. 72, and we have reposted that for Thursday of next week, March 3. We are also having a work session next week. Hopefully, if you go to the Internet, we will already have that revised agenda posted for A.B. 72 for next Thursday. Are there any other issues that anybody needs to bring to my attention? With that, we are adjourned [at 10:25 a.m.].

RESPECTFULLY SUBMITTED:

RESPECTFULLY SUBMITTED:

Judy Maddock
Recording Attaché

Nancy Haywood
Transcribing Attaché

APPROVED BY:

Assemblyman Bernie Anderson, Chairman

DATE: _____

EXHIBITS

Committee Name: Assembly Judiciary

Date: February 25, 2005

Time of Meeting: 8:10 a.m.

Bill #	Exhibit ID	Witness	Dept.	Description
<u>A.B. 6</u>	A			Judiciary Agenda, 2/25/05
<u>A.B. 6</u>	B	Assemblywoman Chris Giunchigliani, District 9		Written testimony, 2 pages
<u>A.B. 6</u>	C	Assemblywoman Chris Giunchigliani, District 9		"Juvenile Death Penalty: Background Materials" provided by David Fassler, M.D., Clinical Associate Professor, University of Vermont, College of Medicine, March, 2003.
<u>A.B. 6</u>	D	Judy Phoenix, Ph.D., Nevada State Psychological Association		Testimony, 4 pages
<u>A.B. 6</u>	E	Mary Berkheiser, Ph.D., Co-Director. Juvenile Justice Clinic, Las Vegas		Testimony, 4 pages
<u>A.B. 6</u>	F	Richard Siegel, Director, ACLU of Nevada		Memorandum Re: Juvenile Death Penalty and Public Opinion, 7 pages
<u>A.B. 6</u>	G	V. Robert Payant, President, Board of directors, Religious Alliance in Nevada		Religious Alliance in Nevada, Position Statement, <u>A. B. 6</u> , 4 pages.
<u>A.B. 6</u>	H	Franklin M. Holzhauer, Legislative Chairman, Nevada State Council of the Knights of Columbus		Knights of Columbus letter to the Assembly Judiciary Committee, 2/25/05

<u>A.B. 6</u>	I	Nancy Hart, Amnesty International, USA, and the Nevada Coalition against the Death Penalty		Pamphlet: "Human Rights and Human Wrongs," 33 pages
<u>A.B. 6</u>	J	Ben Graham, Legislative Representative, Nevada District Attorneys Association		Pamphlet: "Death Penalty Legislation: <u>A.B. 6</u> , Opposition," 74 pages