

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

**Seventy-Ninth Session  
March 29, 2017**

The Committee on Judiciary was called to order by Chairman Steve Yeager at 8:06 a.m. on Wednesday, March 29, 2017, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at [www.leg.state.nv.us/App/NELIS/REL/79th2017](http://www.leg.state.nv.us/App/NELIS/REL/79th2017).

**COMMITTEE MEMBERS PRESENT:**

Assemblyman Steve Yeager, Chairman  
Assemblyman James Ohrenschall, Vice Chairman  
Assemblyman Elliot T. Anderson  
Assemblywoman Lesley E. Cohen  
Assemblyman Ozzie Fumo  
Assemblyman Ira Hansen  
Assemblywoman Sandra Jauregui  
Assemblywoman Lisa Krasner  
Assemblywoman Brittney Miller  
Assemblyman Keith Pickard  
Assemblyman Tyrone Thompson  
Assemblywoman Jill Tolles  
Assemblyman Justin Watkins  
Assemblyman Jim Wheeler

**COMMITTEE MEMBERS ABSENT:**

None

**GUEST LEGISLATORS PRESENT:**

Senator Tick Segerblom, Senate District No. 3  
Assemblywoman Dina Neal, Assembly District No. 7



**STAFF MEMBERS PRESENT:**

Diane C. Thornton, Committee Policy Analyst  
Brad Wilkinson, Committee Counsel  
Erin McHam, Committee Secretary  
Melissa Loomis, Committee Assistant

**OTHERS PRESENT:**

Cynthia Portaro, Private Citizen, Las Vegas, Nevada  
Drew Johnson, Senior Fellow, Taxpayers Protection Alliance  
Scott L. Coffee, Attorney, Clark County Public Defender's Office; and representing  
Nevada Attorneys for Criminal Justice  
Michael Pescetta, Private Citizen, Las Vegas, Nevada  
Charles "Chuck" Durante, Pastor and Chair, Life Peace and Justice Commission of  
the Diocese of Reno; and representing Nevada Catholic Conference  
Maizie Pusich, Chief Deputy Public Defender, Washoe County Public Defender's  
Office  
Nancy E. Hart, President, Nevada Coalition Against the Death Penalty  
Holly Welborn, Policy Director, American Civil Liberties Union of Nevada  
Lynn Chapman, State Vice President, Nevada Eagle Forum  
Christopher J. Hicks, District Attorney, Washoe County District Attorney's Office;  
and representing Nevada District Attorneys Association  
Steven B. Wolfson, District Attorney, Clark County District Attorney's Office  
Christopher J. Lalli, Assistant District Attorney, Clark County District Attorney's  
Office  
Ronald P. Dreher, Government Affairs Director, Peace Officers Research Association  
of Nevada  
Terri Bryson, Chapter Co-Leader, Desert of Hope Chapter, National Organization of  
Parents of Murdered Children, Inc.  
Shalonda Hughes, Private Citizen, Las Vegas, Nevada  
Tereza Trejbalova, Private Citizen, Las Vegas, Nevada  
Kenneth Cherry, Sr., Private Citizen, Oakland, California  
Jennifer Otremba, Private Citizen, Las Vegas, Nevada  
Lisa Postorino, Private Citizen, Las Vegas, Nevada  
Brett Kandt, Chief Deputy Attorney General, Office of the Attorney General  
Tehran Boldon, Private Citizen, Las Vegas, Nevada  
Escenthio Marigny, Jr., Student and Climate Justice Organizer, Progressive  
Leadership Alliance of Nevada  
Wendy Stolyarov, Legislative Director, Libertarian Party of Nevada  
Donald G.T. Gallimore, Second Vice President, Reno/Sparks Branch, National  
Association for the Advancement of Colored People  
Sarah Collins, representing Nevada Psychological Association  
Tamika Shauntee, representing Las Vegas Branch, National Association for the  
Advancement of Colored People

**Chairman Yeager:**

[Roll was called and Committee protocol was explained.] We will now formally open the hearing on Assembly Bill 237. Before we get started, I want to give everyone a roadmap on how we are going to move through this meeting today. We have the bill's sponsors at the table. After they are done speaking, I have a list of people who are going to testify in support as part of the presentation. That list contains an additional eight or nine people. We have spoken about making sure the testimony remains brief. At that time, I will take questions from the Committee for the presenters. If you have a question that is directed toward a specific presenter, that would be helpful. If your question is general, I would ask the presenters to designate one person to answer that question. We simply do not have time for everyone to answer every question. I want to make sure we have a complete hearing. I know we could go on for several hours, but we only have about 2.5 hours. After the presenters, I will take supporting testimony, opposition testimony, and neutral if there is anyone.

**Assembly Bill 237: Abolishes capital punishment. (BDR 15-544)**

**Assemblyman James Ohrenschall, Assembly District No. 12:**

It is not difficult to understand why we, as a state, have in the past turned to the death penalty as a punishment for the gravest of crimes. Emotionally, the response to the deep injustice of murder can be difficult to separate from the realities of state-sanctioned execution. In the case of the death penalty in Nevada, the reality is complicated and nuanced, but the truth remains—the death penalty is a costly, intrinsically unfair, and ineffective deterrent. Nevada has executed just a dozen inmates since the ban on the death penalty was lifted in 1976 by the Supreme Court of the United States, despite the fact that the state typically houses 80 inmates on death row. Moreover, 11 of those 12 executions were what are called "volunteers." They were inmates who decided to waive any further appeals and be put to death rather than live out their days in prison. The fate of Nevada's current 80-some death row inmates remains, at best, in question. A person sentenced to death in Nevada is more likely to die of natural causes than to be executed, and more than three-quarters of Nevada's death row inmates have been there for more than a decade, while more than half have been on death row for more than two decades. Despite these facts, Clark County, our state's most populous county, has one of the highest per capita rates of pending death penalty cases in the country—more pending cases than San Diego, Los Angeles, and San Francisco combined.

It is not difficult to see that the number of inmates on death row will only increase in coming years, as Nevada is now unable to acquire the lethal chemical cocktail required to perform executions in this state. In fact, just last September the state issued 247 requests for proposals to supply these drugs required for lethal injection and received no bids from any pharmaceutical companies. In fact, the pharmaceutical company Pfizer stated its intent to refrain from providing the drugs going forward, releasing a statement saying that "Pfizer's mission is to apply science and our global resources to improve health and well-being at every stage of life. We strive to set the standard for quality, safety, and value in the discovery, development, and manufacturing of medicines. Pfizer makes its products to enhance and save the lives of the patients we serve. Consistent with these values, Pfizer strongly objects to the use of its products as lethal injections for capital punishment."

The statement ([Exhibit C](#)) outlines Pfizer's methods for restricting access to the drugs required for lethal injection, effectively ensuring that wholesalers, distributors, and direct purchasers would be allowed to access the drugs only "under the condition that they will not resell these products to correctional institutions for use in lethal injections," and that "Government purchasing entities must certify that products they purchase or otherwise acquire are used only for medically prescribed patient care and not for any penal purposes."

Beyond the logistics of the state's lack of access to the lethal chemicals used for capital punishment, the reality of the astronomical cost for the state must be considered. In 2014, the Nevada Legislature conducted an audit that documented the high financial costs of continuing to offer capital punishment as a penalty in Nevada. According to this audit, the decision to seek the death penalty adds, on average, about \$500,000 to the cost of a case, as opposed to a similar case being prosecuted as life without the possibility of parole. That cost is incurred every time the death penalty is sought, even though fewer than 20 percent of these cases result in a sentence of death. A 2012 University of Nevada, Las Vegas (UNLV) study estimated that the 80 capital cases prosecuted in Clark County would cost \$15 million more than if they had been prosecuted without seeking the death penalty.

Chairman Yeager and members of the Committee, I am intimately aware of the fear that many Nevadans have in response to removing the death penalty as a potential deterrent to would-be criminals. In separating emotion from the facts, we must consider the thoughtful research that, time and again, has failed to show any connection between deterrence of violent crime and the death penalty. In 2012, the National Academy of Sciences, after reviewing 30 years of research, found that there was no proof that the death penalty acted as a deterrent, stating that, "research to date on the effect of capital punishment on homicide is not informative on whether capital punishment decreases, increases, or has no effect on homicide rates. Therefore, the committee recommends that these studies not be used to inform deliberations requiring judgments about the effect of the death penalty on homicide. Consequently, claims that research demonstrates that capital punishment decreases or increases the homicide rate by a specified amount or has no effect on the homicide rate should not influence policy judgments about capital punishment." That is from the United States Department of Justice study through its research branch, the National Institute of Justice.

The death penalty's unfairness is also well documented. When Harvard Law School's Fair Punishment Project analyzed the country's 16 counties that imposed the most death sentences from 2007 to 2015, the analysis found that Clark County exhibited the highest levels of prosecutorial misconduct. The Nevada Supreme Court echoed these findings, noting misconduct in 47 percent of Clark County death penalty cases reviewed on appeal since 2006. During the same period, the Project also found that 71 percent of victims in cases that resulted in a death sentence were white, while only 33 percent of murder victims in Las Vegas, the most populous county in our state, were white. In fact, based on exonerations, innocent African Americans are roughly seven times more likely to be

wrongfully convicted of murder than innocent Caucasians. Examinations of reviews of the relationship between race and the death penalty conducted in every major death penalty state found that 96 percent of those reviews showed a pattern of either race-of-victim or race-of-defendant discrimination, or both.

While the emotions often tied to the death sentence are undeniable, the facts remain unavoidable. Beyond the logistical problem of the state's inability to acquire the chemicals required to carry out a death sentence, it is an inescapable truth that the death penalty is unfair, ineffective, and extremely costly to our taxpayers. It is time that the Nevada Legislature recognizes these truths and ends capital punishment in Nevada. Chairman Yeager, with your permission I would like to turn it over to Senator Segerblom. I then have Cynthia Portaro, the mother of Michael Portaro who was murdered in Clark County in 2011. Cynthia would like to testify in support of the bill, as will Drew Johnson from the Taxpayers Protection Alliance.

**Senator Tick Segerblom, Senate District No. 3:**

I will be brief since Assemblyman Ohrenschall said it all. The reality is that it is important to reconsider this issue every few years because it is a moral issue and an expense issue. From a moral ground, I do not see how we can justify capital punishment. If killing is something that our society condemns, how can we as a society turn around and kill people? As long as we are killing people, others will be killing people. Looking at the financial aspect, it has cost us a fortune and it is ineffective. We had to spend \$800,000 to build a death chamber, but we cannot buy the drugs to use the death chamber. It is half a million dollars more every time it is sought. There is no good reason for it other than the psychological factor of wanting to be able to kill somebody. If you realize that you cannot kill anybody at the end of the day, why waste that money, why waste those resources, and why stigmatize our society by saying that as a society we are entitled to kill people. Thank you for raising this issue. I am somebody who believed we would never have legalized marijuana in my lifetime and we did, so hope springs eternal.

**Cynthia Portaro, Private Citizen, Las Vegas, Nevada:**

This is an emotional topic for me. I am not just here based on emotions; I am very educated in this process. I am also engaged in this bill. I am fully aware of the financial aspects of this, but I am more aware of the devastation that we victims of crime live with day in and day out. Tomorrow marks the six-year anniversary of my son being brutally shot and killed for just a car theft. The guy wanted his car. My son was sitting in a parking lot of a restaurant in Las Vegas right across the street from a very popular hospital. He had his door open. My son's killer's name is Brandon J. Hill. You will hear me use his name. He was convicted of the crime. He was sitting on a bench in front of the restaurant waiting for somebody's car that he could hijack. My son was out selling tickets for a concert in which he was performing. He was a songwriter and performed on stage. He met two women in the parking lot of this restaurant to exchange tickets for money. He had called his partner 15 to 20 minutes prior to that and told him that he would be back to the place they were going to practice by 11 or 11:15 a.m. At that time, he got out of the car, exchanged the tickets and

money, got back in his car, and left his door open. Brandon came up, walked for 11 seconds, and shot my son. It is funny, but I cannot remember if it was four times in the head or six times in the head. I did sit through the trial. I heard the details of the crime that Brandon committed.

Michael was a good kid. He was always good to the underdog. He never accepted bullying in school and he protected kids. His best friend in high school was a quadriplegic whom he cared for on a regular basis. He was a teenager. He did his share of mischievous stuff, but he had a heart of gold. If Brandon had walked up to my son and said, "Hey, I want your car," my son would have given him the keys and said, "Here you go, bro."

My 16-year-old daughter was extremely close to my son. I raised five children in Las Vegas and they all went to the same high school—Faith Lutheran Middle School and High School. I raised my kids to be kind to others. If they would come to me with a situation, I would ask them, "How would that affect so-and-so? Think of their feelings. Think of how that is going to relate to them." That may not be important to this bill, but it is important when you have a family that, in the blink of an eye, is devastated. My daughter took it the hardest. As a mother, you want to protect your children. When you do not have that choice, when that choice is taken from you, you are devastated. We finally got my daughter, as angry as she was, into a good counsellor and in a good place. I took her and some friends up to our mountain condo in Brian Head, Utah. She was killed on an ATV five months later. She rolled it. She was a good driver, but there was some conflict with a car that was coming toward her. She tried to veer off of the road. I was the first one on the scene. After losing my son, we had to deal with Chrissy's death. Both I and my husband, who followed most of the postponements, wanted the death penalty. My family wanted revenge. We were angry.

The stress of having to go through what you go through as a family without your two kids is great. My other three kids were not the same for a long time. It takes a long time. What the state offers us victims of crime is a mere \$1,000 toward counselling per family member. You tell me, after six years, how \$1,000 is going to cover the heartache that a parent, sibling, family member, or friend feels at the loss of somebody so wonderful. Sitting through postponement after postponement for over four years, finally we came to trial. In the meantime, my husband was diagnosed in October 2012 with a tumor in his sinus cavity. He passed away Thanksgiving Day, 2014. In six years, half of my family has disappeared. Now, as a mother, I am faced with sitting through the trial of my son. Going into that trial, listening to what I listened to, and hearing what I heard not only broke me to pieces, but I was angry and upset.

My son's killer, Brandon, is black. My son is white, with blue eyes and dark brown hair. In the meantime, Trayvon Martin was killed. Everybody knows about that trial because it made national news and President Obama made a big stink about it. It angered me even more to think that a black kid killed a white kid; what is the difference? Blood is blood; red is red. We are all called to be human beings. Why make such a big deal out of that and not about my son? As I started to think about my faith, I started to think we are called to forgive. We are called to be different if you are a faithful person. During the trial, after the closing

arguments, I sat and thought, What if a mother who is devastated by what happened to her son forgave a black kid for killing him. What would that do to society? Would that not show peace and forgiveness? Maybe he has something that he needs to do for the rest of his life. I went to the prosecution and said, "I want to talk about this death penalty thing. I do not want it." They were not happy. He said, "No, we cannot do that. We need to have this. We need life in prison." That is basically what he was telling me was if we got the death penalty he would for sure be in prison for life. I said, "No, I do not want that on my head. I want to be able to sleep at night knowing that a life was saved, not taken." Too many lives are taken because of poor decisions that people make, and I wanted it to end right there. That was my decision—to say, I do not want the death penalty because it does absolutely nothing. I sat before a panel of attorneys at UNLV, and one of the attorneys said, "We want restitution for the family." I got up and said, "Restitution? Is killing somebody going to bring my son back? No, it is not. Nothing is going to bring my son back, but maybe this kid can make a difference in the world." I chose to say no to the death penalty. It does not do anything for me. Some of these murder victims lose their breadwinners. Their kids are losing their father or mother to crime. Where is restitution? Why can we not use some of that money to help these families get back on their feet? I deal with an organization of homeless teens, Project 150, and there are kids who lose their parents and are living on the street. We help take care of them. Why is our state not using some of these funds to take care of these families? That is where I became educated.

When my daughter died, her volleyball teammate had a dream. The only thing in the dream was that my daughter said to her, "Colossians 3:15." I do not know what your faith is; I only know what mine is. This is not about me telling you how to think. When you read this, the scripture is "Let the peace of Christ rule in your hearts, since as members of one body you are called to peace. And be thankful. Let the message of Christ dwell in you richly as you teach and admonish one another, [forgiving one another] with all wisdom." That scripture has carried me through today. I thank you for allowing me to speak from my heart and from my knowledge. We need to make a change in what is happening in our country with the anger that people have; for killing people for no reason; for the horrific crimes that have taken place that I have personally helped parents deal with. It is something that needs to stop.

**Chairman Yeager:**

Please accept our deepest condolences for your losses, and thank you for being here and sharing with the Committee.

**Drew Johnson, Senior Fellow, Taxpayers Protection Alliance:**

Chairman Yeager, you are my Assemblyman. I live in Summerlin South, Las Vegas. As much as I appreciate you and the other Democrats having me here to speak, I am not here to talk to you. I am here to talk to the Republicans, my fellow conservatives. I am a senior scholar at the Taxpayers Protection Alliance, a group committed to ensuring that government remains small and responsible and that tax dollars are well-spent and used responsibly. I am also the national director of a group called Protect Internet Freedom. I have columns in the *Daily Caller*, *Newsmax*, and *The Hill*. I founded one of America's most successful free

market think tanks and ran it for about ten years. I also worked at the American Enterprise Institute and the National Taxpayers Union. I say all of that to say I am one of you. I am a conservative, and I have committed my entire life to promoting conservative, free-market, limited government values. For years, I supported the death penalty because I thought it was the "conservative" thing to do. I now understand that capital punishment is against all the values I hold dear as a conservative. I believe the death penalty is the single least-conservative thing that we do as a society.

The most important principle for Republicans and conservatives is the idea that government should be limited in size and scope. Most of the Republicans sitting here today ran on the promise that you would reduce the expense and the expanse of government here in Nevada. When you think about it, we do not trust government to hand out driver's licenses. In this state, we do a terrible job at those sorts of basic things with the weight and mounds of bureaucracy. For some reason we trust the government to kill its own citizens. Not surprisingly, a bloated, inefficient, ineffective state government makes mistakes. Nearly 160 Americans have been released from death row due to wrongful convictions. Others have not been so lucky.

More than 4 percent of the people put to death since America reinstituted the death penalty in the mid-1970s were innocent, according to the *Proceedings of the National Academy of Sciences*, a scientific journal. Even if we lived in a dream world where we were sure we never put an innocent person to death, it still gives government power it should not have: to be able to kill its own citizens. Speakers after me will talk about compassion. Certainly, the preceding speaker spoke about compassion. I want to talk about a different kind of compassion—compassion for taxpayers. Let us be honest—Nevada does not have a death penalty. In almost 40 years, we have put one person to death against his will. As Assemblyman Ohrenschall said before I came up, 11 other people chose to be executed because they would have rather died than spend the rest of their lives in jail. That speaks to the fact that life without parole, functionally death in prison, is in many cases a worse punishment than the death penalty. The state really does not have a death penalty now because there is no way to get the lethal injection drugs. It will probably be years, if ever, before we are able to get the drugs again. The state, for all intents and purposes, does not have a death penalty, but it does have a death penalty prosecution racket that adds half a million dollars to the cost of every death penalty case. The defendant is not even sentenced to death in more than 80 percent of those cases. We are paying half a million dollars a case when usually they are not sentenced to death. Even if they are sentenced to death, they are never actually put to death.

Credible studies indicate that the total price tag to sentence a murderer to death by execution generally runs about ten times higher than sentencing the same person to death in prison when you factor in other costs such as appeals and the additional expense of housing somebody on death row. This particularly affects Clark County, which is literally, per capita, the death penalty capital of the United States. In Clark County, taxpayers including me pay tens of millions of dollars to sentence criminals to death by execution, when they end up dying in prison, just like the inmates who are sentenced to life in prison. As a professional



budgetary economist, I find it irresponsible that the Legislature has not already repealed the death penalty. As a Clark County taxpayer, I am sick and tired of being ripped off, having my money spent for absolutely nothing except a silly dog-and-pony show that allows district attorneys and other officials to say they are being tough on crime, when by prosecuting somebody for the death penalty they get the same outcome as if they had prosecuted them for death in prison. Death in prison is what life without parole is here in Nevada. Since 1995, Nevada has had the strongest life-without-parole laws in America. If you are sentenced to life without parole in Nevada, you spend your life in jail. You never set foot outside of the penitentiary. It is the same as being sentenced to death.

Besides being ridiculously expensive, the death penalty fails at the only thing it is supposed to do, which is deter crime. No credible study shows that the death penalty actually deters crime. Studies have shown that states without the death penalty actually have lower crime rates than states with the death penalty. There is an inverse relationship to having the death penalty in your state. The death penalty does not always provide closure to victims' families. There is no peace or closure. It often prolongs their agony because of the appeals process and the fact that they are never actually put to death. In fact, several families of victims killed in the Boston Marathon bombing objected to death penalty prosecution after speaking with other murder victims' families, who warned about the numerous appeals and often emotionally painful legal process associated with the death penalty.

The Nevada Legislature is unique because every other state that is seriously considering repealing the death penalty actually has Republicans sponsoring or cosponsoring the death penalty bill. This includes GOP lawmakers in Missouri, South Dakota, Wyoming, Nebraska, Utah, Kansas, Kentucky, Montana, Georgia, and New Hampshire. It seems like in many ways you are behind the trend when it comes to supporting death penalty repeal. I encourage you to consider not only cosponsoring this bill, but also voting for its passage, both in this Committee and on the floor. Ultimately, there is nothing that violates conservative, Republican, limited-government principles more than the death penalty. Let us be honest: this year you guys are not going to win many battles. This is one opportunity where you can be involved in passing something that actually does uphold our conservative principles. By abolishing the death penalty, you will save taxpayers money, eliminate the possibility of killing an innocent person, get rid of a completely useless government program, and strip the government of a power it should not have. What could be more conservative than that?

**Chairman Yeager:**

Members, we are going to hold questions until we finish with the other presenters. Next, we will call up Mr. Coffee and Mr. Pescetta.

**Scott L. Coffee, Attorney, Clark County Public Defender's Office; and representing Nevada Attorneys for Criminal Justice:**

I have been on the front lines of this for the better part of 20 years. Nevada reinstated the death penalty in 1977 after a Supreme Court decision in 1976. I have been around for half of that time. As a result of that, I have by necessity dug into numbers related to the death penalty. The numbers are staggering, even if you philosophically are in favor of the death

penalty. I understand that all of us may not have the grace of Ms. Portaro and be able to accept what happened as graciously as she did. Some people may feel it necessary to push for the death penalty. Nevada's death penalty is broken; it is broken beyond repair.

Since January 1, 2005, there have been 175 death penalty notices filed in Clark County. If you look at the legislative cost audit, you are talking about a cost of \$70 million to put those cases through the system, above and beyond what it would have cost to take those cases to trial as life-without-parole cases. It is a huge amount of money. Even if you believe that the death penalty is some kind of moral imperative necessary for the worst of the worst in the right case, whether you are likely to have the death penalty sought in your case in Nevada has more to do with where the crime occurs than what you have done. How can I say that? I can say that because since 2005, Washoe County has sought capital punishment in only 4 cases compared to the 175 in Clark County. We are filing at 40 times the rate in Clark County that they do in Washoe County, even though the number of murders is about 7 times as much. There were about 200 murders in Washoe County during that period; there were about 1,500 in Clark County. The numbers are extremely out of proportion.

Why is it so expensive? Common sense would tell us that if we execute someone, it should be cheaper. We do not have to pay for "three hots and a cot" for that person. I have heard that pitch before. The ugly secret of this is that we do not execute anybody. Nevada juries have handed back a death sentence 186 times. In 186 times, we have had 12 executions. It is less than 10 percent, and most of those people volunteered. It is a less than 1 percent chance of executing a non-volunteer over a 40-year history. It is getting worse because of the unavailability of drugs about which we have talked. We simply do not have the means of going forward.

There is an argument to be made that sometimes they are simply the worst of the worst and we need a designation. The truth is that Nevada's death penalty at this point is little more than a label—a designer label that has no real purpose—we foot the bill for it time and again. I say that because of the lack of executions. I say that because of the reality. The lack of closure that Mr. Johnson just spoke about is certainly true. There is an argument to be made that there is no price that can be put on justice, and I understand that. Justice is not something we get with Nevada's death penalty.

What the bill does is convert Nevada's death penalty to death by incarceration. You will die because of your conviction. You will never see the light of day. That is what the death penalty in effect is right now—death by incarceration. If you take away the label, the costs go away.

Why is it so expensive? Death is different. The United States Supreme Court said so in 1972 when they struck the death penalty. They said so in 1976 when they brought it back. Our Supreme Court said so 20 years ago when they adopted something called "Nevada Supreme Court Rule 250," which qualifies what I have to do in a capital case to prepare that case. In a normal murder case, my investigation looks at an hour, or perhaps a day, in someone's life. In a capital case, I have to look at their entire life history. That is

expensive. It is eight times more expensive in a pre-trial phase, according to the cost audit, for the defense of a capital case compared to a noncapital case, regardless of whether the death penalty is imposed, regardless of whether the case is negotiated. By the way, 60 percent of those 175 that have filed since 2005 will end up in a negotiation before they go to trial. When they go to trial, only about 1 in 3 is going to result in a death penalty. Then we get to the futility of that when there are no executions.

It is broken. It is getting worse. We have tried to tinker with it and fix it for every session since I have been up here—this is probably my fifth or sixth, and Mr. Thomas Pitaro has done more than that—and the solutions just have not worked. There is no good way to do this. If we replace the death penalty with death by incarceration, which is what the death penalty is, all of these things that control my behavior go away—Supreme Court Rule 250 and Administrative Order ADKT-411. I do indigent defense. I defend people who have no money, and of these 175 death penalty cases, the taxpayers have footed the bill for approximately 170 of them. Almost nobody can afford the money to put on a capital defense; it is just not there. When that piece of paper is filed things trigger. For example, under Supreme Court Rule 250, two attorneys have to be appointed as opposed to one. The hourly rate goes from \$100 an hour to \$125 an hour. Those costs just continue to generate. If we were getting a bang for our buck it might make sense, but I can think of no bigger waste of Nevada's tax dollars than fighting to put the label of death penalty on the case and spending the money for it when there is no means of doing it and there is no chance that it is going to be carried out. For that reason, we are in support of Assemblyman Ohrenschall's bill.

**Michael Pescetta, Private Citizen, Las Vegas, Nevada:**

I am a lawyer and practice almost exclusively in death penalty work and review in state and federal court. I am here representing myself and not my employer, the Federal Public Defender, District of Nevada. I am not expressing the views of that office. We have supplied you with some statistics ([Exhibit D](#)), which are fairly dry. It begins with a sheet titled "The Death Penalty in Nevada Since 1977." We have compiled these statistics over the years as part of our litigation efforts. Since 1977 when the death penalty was reinstituted here, there have been 186 death sentences imposed and a total number of 160 individuals who were sentenced to death. The total number of reversals, the third line on this sheet, is 88, which is 46.7 percent of those imposed death sentences. The number of individuals who have been removed for legal action, followed by either a new penalty hearing or a negotiation, is 50, which is a little over 30 percent of those cases. Putting aside any of the other contentious issues about the death penalty itself, if this were a government program that was just being offered to this body as a good idea, some members of this Committee would say, "This system has an error rate of 46 percent and a failure rate of over 30 percent. Does that make sense? Is that a system that is worth having, is that a system that is worth continuing to fund, and does it do what it is supposed to do?" I think not.

The fundamental problem is that when the United States Supreme Court in 1972 declared that all death penalty statutes then in existence were unconstitutional, part of their reasoning was that it gave jurors and prosecutors too much power over the entire range of murder cases. Typically at that time, most state systems gave the issues to a jury, a jury decided whether the person was guilty of first-degree murder, and then decided the sentence without any guidance at all. In a memorable phrase, it was said that being sentenced to death was arbitrary in the sense that being struck by lightning was arbitrary. In 1976, the Supreme Court allowed the death penalty to be reinstituted if states had guiding standards for how and to whom it was imposed. In 1977 Nevada adopted a death penalty statute, which depends on what are called "aggravating factors"—statutory circumstances where those factors are going to narrow the number of individuals who are exposed to the death penalty or eligible to be sentenced to death and so reduce the arbitrariness of the system. Beginning in 1977 with the initial death penalty statute, that list of aggravating factors is now 15 with some subparts. It is more difficult to find a first-degree murder that would not be death-eligible than it is to find one that would be.

This list of aggravating factors has done nothing but expand over the years, and it captures the great majority of first-degree murder cases. For example, if you look at the Federal Bureau of Investigation (FBI) statistics on murder in the United States, other than being killed by someone whom you know or someone in your family, the next highest percentage of death of circumstances of first-degree murder is felony murder. That is a murder that happens in the course of committing another felony. Of course, we have a felony murder aggravating factor in Nevada, as do many states. What we are saying is that the narrowing function that the United States Supreme Court was looking for by bringing the death penalty back under these narrower circumstances includes something that captures almost all of the first-degree murder cases. Our experience has shown that it is just too hard—we are human beings and as such all fallible; certainly lawyers, certainly judges, and legislators as well—to create a system that is going to fairly and reliably determine who should live and who should die. Our experience, like all states that have the death penalty, shows that we cannot do it. We can narrow the scope of the arbitrariness somewhat if those aggravating factors are policed, but once it gets to the jury, they have virtually unlimited discretion to say yes or no once death penalty eligibility is established for these aggravating factors. If you looked at the nearly 1,000 people in prison in Nevada for homicide and the 82 who are on death row for first-degree murder, I think you would be hard-put to tell the difference, except in rare cases, between the cases in which the death sentence was imposed and those in which a death sentence was not imposed.

That is really the key to much of my practical objection to the death penalty. People have, in general, a very inaccurate view of what we are doing. We are always told, and I am sure some of the prosecutors who will testify against this bill will emphasize, about the terrible brutality of cases that make the death penalty the only possible sentence. You cannot get the death penalty in Nevada unless you have committed a first-degree murder. There are no nice first-degree murders. Every first-degree murder leaves a brutal scene with horrible autopsy photographs and grieving relatives. Let me make clear that nobody can discount the kind of damage that victims and their family members experience. However, for the approximately

90 percent of people who are in prison for first-degree murder, all of those characteristics are true in those cases too. We have some cases that are very egregious in which a death sentence is imposed, and we have some where it is not. We have some cases that are not, in the universe of first-degree murders, particularly egregious, yet they result in a death sentence. This is where the use of discretion by prosecutors is key. I do think that prosecutors in the main sincerely try to reserve death sentences for the worst of the worst, but they cannot control what jury verdicts are. It is very controversial what the "worst of the worst" means.

Most people would agree that a murder in which two people are killed is worse than a murder in which one person is killed. Most of the people on death row in Nevada have killed one person, but there are people who have killed two or more people who are not on death row and sentenced to life without the possibility of parole. A case arose on the night of the Rodney King verdict where two men decided that under the cover of the confusion it would be a good time for them to deal with a person they thought was a police informant. They went to the suspected informant's house. There were four people in the house, and they killed all four people. There was a child who was not killed. Those two individuals went to trial and were convicted of four first-degree murders. The first one was not sentenced to death by the jury; he was sentenced to life without the possibility of parole. He has four first-degree murder convictions and he is not on death row. The second man went to trial, was convicted of four first-degree murders, and sentenced to death. The distinction between them is illusive in terms of their culpability. It turned out that that conviction and those sentences were reversed by the Nevada Supreme Court and sent back for a retrial. Because of a plea negotiation, that individual was sentenced to four counts of life without the possibility of parole. Take one of the relatively famous cases among lawyers in Clark County: two men go over to see a drug dealer with the intent of robbing him. They end up robbing him, killing him, and killing his wife after raping her. They are tried together and both convicted of two counts of first-degree murder. Each one of them had 12 or 13 aggravating factors relating to those convictions, and the jury sentenced both of them to life without the possibility of parole. Those seem like egregious cases. They did not end up in death.

Take the other end of the spectrum: someone currently on death row. He and another man went to get some drugs from their drug dealer who was a street dealer. The individual on death row was the driver. The passenger had a gun. They get the drugs from the dealer and drive away without paying. The drug dealer gave chase and the passenger leaned out of the window, shot, and killed the drug dealer. The passenger, who actually killed the victim, pled guilty and was given life without parole. He also agreed to testify, but ultimately he did not. The driver, who did not have a gun—and there was never any evidence that anyone had conspired or agreed ahead of time to kill this drug dealer—had an unfortunately substandard lawyer, and he was sentenced to death. In one transaction, we have the actual killer who gets life without, we have the person who did not plan or commit the killing on death row, and the district attorney's office is continuing to litigate that case to keep him on death row. This would strike most people as counterintuitive. The fact is that there is no mechanism in our statute to address that.

Every prosecutor and every district attorney in every county can decide whom he or she wants to charge with the death penalty. The extent of the aggravating circumstances is so broad it is usually possible to find an aggravating circumstance to allege against a defendant who has committed first-degree murder. There we have what we have now, on a slightly smaller scale: a situation in which being sentenced to death is arbitrary in the same way being struck by lightning is arbitrary. It does not diminish or disrespect the suffering that is undergone by victims and their families to say we are not good enough to figure out, in a constitutional way or in a fair and reliable way, that this person should be on death row and this person should not be under those circumstances.

On the deterrence point, there is a lot of statistical evidence that has been put before you. I would ask you to look at the Death Penalty Information Center material ([Exhibit E](#)) that is attached to this statistical information. Think of it this way: New York and Texas could hardly be more different. Texas [page 3, ([Exhibit E](#))] has executed over 540 people since the death penalty came back in 1977; that is over a third of all the executions in the country since then. New York has not executed anybody; they had a death penalty very briefly, and it was found unconstitutional. Their homicide rate today is identical. Look at two states that are closer in their characteristics—North and South Dakota. South Dakota has the death penalty and North Dakota does not. North Dakota's homicide rate is 2.8. South Dakota's homicide rate is 3.7. It is 1.1 higher in the state with the death penalty. Finally, on the cost issue, the study that was done by the Legislative Counsel Bureau (LCB) looked only at the costs through the trial and appeal. That does not count postconviction habeas and it does not count federal review in which the Office of the Attorney General conducts the litigation. Litigating these cases is always a moving target because the laws change. There is a case that the United States Supreme Court decided last year that a certain element of death eligibility, outweighing [*Hurst v. Florida*, 577 U.S. \_\_ (2016)] which we have in our state, has to be found beyond a reasonable doubt. No jury in any Nevada case has ever been instructed that they had to find that outweighing element beyond a reasonable doubt. We are going to be functionally litigating that forever—in every one of those 82 cases that are still pending. It takes a long time and it takes a lot of money, but when you get down to it, just in September of last year, the Nevada Supreme Court sent a case back down 23 years after the offense for a hearing on actual innocence. It was hearing not based on DNA, but based on medical evidence that existed at the time of the offense that showed that the child who died actually died of medical conditions, not from being beaten to death as was alleged by her mother's boyfriend. It took 23 years for us to figure that out. It is too hard. That is the basis I submit for supporting this bill. To achieve a fair and just system for choosing who lives and who dies is not something that is within our competence.

**Chairman Yeager:**

I would let the Committee members know the exhibits that Mr. Pescetta referenced are on the Nevada Electronic Legislative Information System (NELIS). They are very good exhibits in terms of describing the history of the death penalty in the state and looking at it as a country

as a whole. Assemblywoman Dina Neal has just arrived, so we will take her testimony next. I would also invite Father Durante and Ms. Pusich to the table. I think we are doing okay on time, but feel free to truncate your remarks. We do have a number of folks who want to speak in opposition and I want to make sure they have an equal amount of time.

**Assemblywoman Dina Neal, Assembly District No. 7:**

This issue was near and dear to my family. My dad focused on this issue, and I have at least six boxes on the death penalty in my garage. I am here today as the Regional Chair for the National Black Caucus of State Legislators. I oversee nine states in the region. We put a resolution together about a year ago in support of abolishing the death penalty ([Exhibit F](#)). I know you have heard a lot of statistics and I see you have 19 exhibits, so I will simply say I appreciate Assemblyman Ohrenschall for bringing the bill and we support the abolishment of the death penalty.

**Charles "Chuck" Durante, Pastor and Chair, Life Peace and Justice Commission of the Diocese of Reno; and representing Nevada Catholic Conference:**

I am a native Nevadan, a member of the State Bar Association, and a concerned citizen who has worked on this area of capital punishment for over 20 years. I can remember working with Senator Joe Neal when this type of bill was presented many years ago. As a student of criminal justice, there has always been something in my gut that tells me the death penalty is wrong, but as I have ministered to victims and inmates alike, it has convinced me even more. The horrific violence of murder is never excusable nor should it be diminished. When I have stood outside the then-Nevada State Prison, the site of our past executions, on the nights of several of these terrible events, I have stood with signs for the victims of murder as well as for an end to another killing through capital punishment.

I have witnessed the heartbreak, the tears, and the anger in conversations with family members of murder victims, and I have seen the rancor, anxiety, and hatred that surfaces every time an execution is scheduled or carried out. Some seem almost to take pleasure in an execution as an opportunity for vengeance or self-righteousness. Others wrestle with having participated in such a death, whether as a guard or an administrator or even a reporter. I find it especially poignant that executions have taken place at night: first at midnight and, I think, the last one at 9 p.m. It is as though the state takes this action in cover of darkness.

It is rare that a family member really finds closure with an execution. It is never able to compensate for the seemingly endless number of times the murder is relived in the media and in the lives of family and witnesses throughout the intense investigation and trial of a capital case and each time there is an appeal or a vacated execution date. A much swifter conclusion that does not require the state to participate in a killing is life in prison without the possibility of parole. That closes the book on the legal process much sooner and allows family members to continue grief counseling and other work toward healing without the threat of being brought back into the court or interviewed by yet another reporter.

It always has been the goal of the criminal justice system to preserve the safety of the people and to weigh evidence and render sentences in an objective manner, based on principles and the rule of law. Yet when a case is certified as a capital case, emotions run much higher, and I have seen some of that integral objectivity displaced. The stakes are high in this type of case that falsely presumes perfection. The alternative to that presumption is settling for the possibility of the killing of another innocent person, this time in your name and mine.

As you know and will hear, many of our sister states in the union and democratic countries around the globe have abolished the use of the death penalty as barbaric, ineffective, and wasteful of government resources. As such, it is a bad public policy that violates the basic principle of respect for human life itself. In light of horrible acts of violence, we can become discouraged and desperate to take a stand. We want to be tough on crime, so we lower ourselves to killing someone to punish and to demonstrate that killing is wrong. So long as we can protect society in another way, and we can, it diminishes all of us when we resort to violence. We do not rape a rapist or beat up someone who has beaten up another because it would be inhuman of us. Yet we will justify killing, the taking of life itself. Many religious leaders across many faith traditions, including Pope Francis and numerous popes before him, have spoken strongly against the death penalty. Pope John Paul II put it well when he was in Missouri in 1999. He called for an unconditionally pro-life stance on the death penalty, saying, "A sign of hope is the increasing recognition that the dignity of human life must never be taken away, even in the case of someone who has done great evil." Modern society has better means of protecting itself. I urge you to move for that means today by ending the use of capital punishment in Nevada.

**Chairman Yeager:**

I would invite the final presenters, Ms. Hart and Ms. Welborn, to the table.

**Maizie Pusich, Chief Deputy Public Defender, Washoe County Public Defender's Office:**

I have defended capital cases in Washoe County for the past 26 years. The risk of executing an innocent person is too high to maintain the death penalty as a possible punishment in Nevada. I had the extraordinary privilege to represent a woman named Cathy Woods. Cathy was convicted of the 1976 murder of a beautiful young woman named Michelle Mitchell. Cathy was seriously mentally ill and falsely confessed to that crime. It may seem hard to believe that people falsely confess to murder, but hers is not the only case where that has occurred. In many of the cases that have been resolved as DNA exoneration cases nationally, there was a confession from the accused. Cathy was arrested, tried, and convicted twice. Her first case was overturned on appeal. She spent over 30 years in the Nevada State Prison and yet, she was one of the lucky ones. She lived to see her conviction overturned and be released from custody and returned to the loving arms of her family. She was not saved because we had the good sense to realize that she was innocent while she was going before those 24 honest and hardworking jurors. She was saved by luck and science. The lucky part was that the crime occurred in 1976 and we did not have a death penalty then, so she did not have to face that. She is one of the people whose case had sufficient notoriety that if it had been available, I do not think she would have lived to be exonerated. The Washoe County



District Attorney and his Chief Deputy, who are both here today, dismissed the charges against Cathy about a year and a half ago because they realized that the actual killer had been found through subsequent police work. You might think the system worked—it did not. Science and luck saved Cathy. All 24 of those honest, hardworking jurors who found her guilty in two separate trials were wrong. While Cathy served her 30-plus years in prison, the actual killer committed new crimes—kidnapping, rape, escape, and three other murders. Cathy was one of the lucky ones because she lived to see freedom.

Nevada has put two innocents on death row. Roberto Miranda was convicted and sentenced to die in 1982. His defense was assigned to a novice. Although Mr. Miranda named six witnesses who could establish his innocence, the young attorney contacted none of them. Mr. Miranda spent 14 years on Nevada's death row before a different attorney showed a court that his defense at trial had been wholly unprepared. The case against Mr. Miranda was dismissed, and he later sued Clark County, the Public Defender's Office, and the detectives who had investigated, and ultimately received a multimillion-dollar settlement for their errors.

Ronnie Milligan was also tried for murder, convicted, and sentenced to die. Mr. Milligan's conviction was the result of opportunistic codefendants. In 1980, he was honorably discharged from the United States Navy. He drove cross-country with a group of acquaintances. By all accounts, he spent most of that trip drunk. In southern Nevada, the group robbed and killed an elderly woman. Mr. Milligan was once again drunk and remembered nothing. The other three men quickly decided to blame him. With no memory of the killing, he was a sitting duck. The state's star witness, a man named Ramon Houston, faced no charges. Two others in the group were convicted of lower offenses, served their time, and were paroled. Mr. Milligan was sentenced to death because the crime occurred in the course of a robbery. The ability to use robbery to support the death sentence was changed by later court rulings and the sentencing was returned to Humboldt County District Court Judge Richard Wagner. Judge Wagner was a tough, conservative judge. Before being elected judge, he served 16 years as a county prosecutor in rural Nevada. He learned during the new sentencing hearing that the state's star witness, Mr. Houston, actually wrote a letter to a friend during the first trial in which he said Mr. Milligan had not even been present at the killing. Mr. Houston had been found with the victim's purse and had her blood on his clothes—Milligan had none of her belongings or any of her blood on his clothing. During the resentencing, Judge Wagner announced that he had "grave reservations" that Mr. Milligan was guilty at all. He ordered him paroled. After over 30 years on Nevada's death row, Ronnie Milligan was granted parole in 2011.

Woods, Miranda, and Milligan collectively spent over 70 years in prison for crimes they did not commit. Yet, they are among the lucky ones. They lived to see their freedom. Whom have we missed and whom will we miss? We should always think about whom we are sentencing to die and whom we are executing. You have heard that the death penalty reflects all the worst of society's prejudices, but it is worse than merely targeting minorities, the mentally ill, the poor, and the poorly educated. It frequently includes people we ought to be nurturing and caring for.

Terry Dennis was one of the convicted that Nevada executed. Terry was 17 when he lied about his age to join the Vietnam War to escape years of being a victim of incest. He served and then returned to the United States an alcoholic and pot smoker. After his service, he was brought back to New York. As he traveled back to Washington State, he ended up stopped in South Dakota where he was charged with possession of marijuana and ordered to serve a year in prison. He still went home and married his high school sweetheart, and they started a family together. He realized that one of his neighbors was molesting another child, and instead of turning to the authorities, he tried to take matters into his own hands. He suffered another felony conviction and served his time. He lost his relationship and his family. He came to Reno. He was an alcoholic although he was no longer using drugs—a year in the prison in South Dakota was enough. He started hearing voices that told him he should hurt someone. He went to the U.S. Department of Veterans Affairs (VA) where he qualified for services and he asked for help. Years before we had a scandal about scheduling at the VA, he was told to come back in a month. By the time he came back for his appointment, his victim was dead. He had killed a woman who he had befriended in a local bar. He called the police and told them he had done it. He pled guilty against the advice of his attorney—me—and he then went to a capital sentencing hearing where a three-judge panel found that he was someone who should be sentenced to die. He became suicidal when he was young, and he stayed suicidal to the end. Terry was one of our volunteers. He was on a mission to complete suicide for most of his adult life, but when he got to Nevada, it worked. We did not offer him the VA support that he had earned. We did not thank him for his service defending us in an unpopular war. The only time that society actually responded to what Terry wanted was in August 2004, when we killed him in the Nevada execution chamber.

Sometimes the death penalty is promoted as a sign of respect or compassion to the surviving family of murder victims. I disagree that it shows respect or compassion. My cousin Michael was murdered when he was 28 years old. Executing his killer will not bring him back; it will not bring my family peace. I understand some of the suffering that family survivors go through, but perpetuating the killing will not alleviate any of it.

Several years ago, I was asked to attend an execution. I did not want to be there, but I had a client who had no local family and did not want to be alone. I am grateful that that execution did not go forward while I was there. When I got inside, after I went through security and they decided I was allowed to be there and that I would be safe, one of the things that surprised me was the prison was offering people coffee and cookies. I am sure they were just trying to be polite. I think they were trying to make us comfortable, but I do not ever want to be comfortable with the death penalty and I do not want any of you to be comfortable with the death penalty.

**Nancy E. Hart, President, Nevada Coalition Against the Death Penalty:**

The Nevada Coalition Against the Death Penalty is a broad-based group of individuals and organizations opposed to capital punishment in our state. We are composed of many different people who support ending our use of the death penalty. There are people of faith who believe that it is wrong for humans to take another life, that taking life is for God to decide. Others are philosophically opposed to the death penalty based on respect for

fundamental human rights, the *Constitution*, or the belief that government does not have the authority to kill its own citizens. We have others who support ending the death penalty because of growing awareness about one or more very troubling issues: that it is racially discriminatory, arbitrary and unfair, extremely costly, runs the risk of executing an innocent person, does not provide true healing for the victim's loved ones, and does not make society safer from violent crime.

Around the country and in Nevada, there is growing support for ending the death penalty. When people learn what is involved in trying to maintain a death penalty system, they understand how broken it is. Here in Nevada, it is tremendously expensive and ineffective, as you have heard. We cannot even carry it out because we lack the drugs to do so. Almost 40 percent of our death row is African American, whereas only 9 percent of the state's population is African American. As you have heard, Clark County has more pending death penalty cases than San Diego, Los Angeles, and San Francisco combined. The needs of victims' family members are largely overlooked.

There have been various efforts to fix our death penalty. In the 15 years since the Coalition was formed, the Legislature has ended executions for people with intellectual disabilities; it ended the death penalty for people who were juveniles at the time of their crime; it ended the use of discriminatory three-judge panels for sentencing; and it authorized a cost audit of the state's death penalty to determine how much we are spending to maintain it. These were important measures that required a lot of advocacy, but they did not fix the many problems. The list of aggravating factors in our statute is still overbroad and unclear. Racial bias remains intractable, and overzealous prosecutors in Clark County continue to file cases at a staggering rate. The bottom line is that Nevada's death penalty is too broken to fix.

There are three recent examples of the breadth of support for ending the death penalty. Virtually all mainstream religious organizations have adopted positions in opposition to the death penalty many years ago, but in October 2015, the National Association of Evangelicals, a stalwart supporter of capital punishment for over 40 years, modified their position to no longer explicitly support the death penalty. This remarkable change was because of growing concerns over the human error in criminal justice, documented wrongful convictions, and a desire among many of their congregations to promote healing instead of retribution.

Just last month, on February 23, 2017, the American Nurses Association took an official position opposing the death penalty for the first time in its organization's history. The organization has objected to nurses participating in the death of prisoners since 1983, but the revised position statement now opposes all capital punishment, not just nurses' involvement.

Just two weeks ago, on March 16, 2017, the head prosecutor for Orlando, Florida, State Attorney Aramis Ayala, announced that she would not be seeking the death penalty in any cases going forward. She said that the death penalty had failed as a deterrent and it did nothing to protect law enforcement officers. She also cited the length of time between sentencing and execution, which often exceeds a decade, and the costs of capital cases. "I am

prohibited from making the severity of sentences the index of my effectiveness," she said in her announcement. "Punishment is most effective when it happens consistently and swiftly. Neither describe the death penalty in this state." Seeking life sentences, she added, would guarantee that "violent offenders will never be released. They will never continue to drain resources from this state with decades of appeals, and we can offer families of the victims more closure and more certainty."

It is very unusual for a prosecutor, especially one from a large metropolitan jurisdiction, to publically state a position against the death penalty. The truth is, Ayala's decision is not unusual. Many district attorneys around the country do not seek death. Of the nation's 2,300 prosecutors, only 27 (barely 1 percent) sentenced a person to death last year. These examples illustrate that professionals and organizations from unexpected sources are increasingly ending their support for the death penalty.

The death penalty in the United States is in decline. There has been a steady and dramatic decline since 1996 in the imposition of new death sentences—from a high of 315 new sentences in 1996 down to only 30 last year, which was a reduction from the previous year. There has been a similar decline in the rate of executions nationwide with only five states carrying out executions last year, 2016, the lowest in over 20 years. Fewer states even have or use the death penalty. In the past decade, eight states have repealed their death penalty laws. Thirty-one states and the federal government still have the death penalty, but 4 of those 31 have governor-imposed moratoria in place. About half of the states in this country have the death penalty and half do not, but that still does not tell the whole story. Contrary to the assumption that the death penalty is widely used in the United States, only a few jurisdictions employ capital punishment extensively. Just 2 percent of the counties in the United States have been responsible for the majority of cases leading to execution since 1976. One of those counties is Clark County. These downward trends in the use of the death penalty reflect communities' growing awareness about the high costs and minimal effectiveness of the death penalty, and serious doubts about aspects such as racial bias and victims' family members' healing.

Going back to the wide support for ending the death penalty, I would like to read from a letter by Jackie Crawford, a former director of the Department of Corrections (NDOC). Ms. Crawford now lives in Utah and was unable to be here today, but she wrote the following:

This letter is to provide my personal views and experiences concerning the death penalty in Nevada as a career correctional practitioner. I retired from Nevada as corrections director in 2006 after six years in that position and four as warden at Lovelock and of the camps. In my career, I have more than 40 years' experience at all levels with state and local facilities and with court administration and parole/probation agencies in midwest and western states. During those time frames, I served two governors: state of Nevada Governor Kenny Guinn and state of Arizona Governor Bruce Babbitt.

My focus was on safer communities and institutions that emphasized programs, preventions, and rehabilitation of the offender. For many years, I supported the death penalty with the belief that it brought closure to the victims, addressed the severity of the crime, made for a safer work environment for corrections and law enforcement staff, and served as a deterrent to others who might have their criminal behavior tempered knowing the serious consequences of their actions. As a deterrent, I do not believe it has had the impact we all had hoped. Our country has experienced many cultural changes, and what once worked does not seem to have the same impact. Emotionally charged offenses are not deterred much by known consequences.

My experience concerning the death penalty is from a correctional operations view. The death sentence requires some stressful periods for staff who practice and carry out the processes of conducting executions. There is stress during the period with considerable attention focused on the institution and stress on staff that requires some decompression and counselling afterward. My primary concern was the impact on staff. We held debriefings and the department offered counselling for staff members who felt the need to discuss their feelings and emotions about the execution. This was provided on a personal and confidential basis for staff.

Victims are not well served when there is considerable uncertainty about the sentence of death being carried out. Recent history has no inmates executed except for those who wish to stop the appeals process and proceed with execution. Victims in these cases have had emotional times since the inmate can make the decision to have the execution carried out only to back out on the day of the scheduled execution.

There were two instances in the six years while I was director where we prepared to carry out the sentence. In one, the sentence of death by lethal injection was carried out as scheduled. In the second case, the inmate requested it be carried out and then changed his mind on the day of the execution. The victim's family in attendance were shocked, devastated, and felt exploited by the inmate. Over the years, I have observed the pain that victims and their families experienced when they had hoped to find closure. I realize those victims did not find closure when the person was sentenced and especially those who hoped for the offender to be executed. Some, but not many, experienced a little closure; but after losing a loved one, we have to heal ourselves through the love and support of others and through our faith.

Elimination of the death sentence would certainly remove a distasteful task from the already difficult job of managing an inmate population and would leave no doubt about taking the life of an innocent person. But there may also be positive and negative outcomes for communities, law enforcement,

prosecutors, and sentencing judges as a result of change. All would agree there are those who are a serious risk to society and should never see the outside of a secure correctional facility. If this bill is passes, I am certain that the current laws will assure that the alternative sentence of life without parole has as much certainty as the designation indicates.

[Also submitted by Nancy Hart was a document titled "Death Row Since 1997 Chronological" ([Exhibit G](#)).]

**Holly Welborn, Policy Director, American Civil Liberties Union of Nevada:**

I would like to thank Assemblyman Ohrenschall and Senator Segerblom for bringing this legislation forward. The United States is the only western democracy today that does not view capital punishment as a profound human rights violation and a frightening abuse of government power. Since our founding nearly 100 years ago, the American Civil Liberties Union (ACLU) has made the abolishment of the death penalty a cornerstone of our work. The death penalty denies equal protection of the laws, is cruel and unusual punishment, and removes guarantees of due process of law. The death penalty is so inconsistent with the underlying values of our democratic system—the pursuit of life, liberty, and happiness—that the imposition of the death penalty for any crime is a denial of civil liberties.

Decisions about who lives and who dies are largely dependent upon the financial means of the accused, the skill of their attorneys, their race, and where the crime took place. People of color are far more likely to be executed than white people, especially if the victim of the crime is a white individual. From 1976 to 2015, 1,392 executions occurred in the United States and 995 of them took place in the South. A mere 2 percent of this nation's counties have produced both the majority of all executions imposed since 1976 and of prisoners awaiting execution on death row. The greater likelihood of its imposition upon the poor is demonstrated, among other things, from the obvious fact that the financially able accused of a crime may employ the Cadillac of legal counsel and compensate them fully for the extensive efforts necessary to pursue remedies available to those under penalty of death. The poor, although they too have the right to counsel, cannot afford the same degree of legal defense. Thus, in the case of the death penalty, the punishment does not fit the crime. It is, in fact, a constitutionally prohibited denial of equal protection of the law because it results, regardless of the written provisions of statutes permitting it, in imposition of the death penalty almost exclusively upon society's most disadvantaged members.

Death imposed by the force of the state is the ultimate form of cruel and unusual punishment and thus prohibited by the Eighth Amendment. In an amicus brief filed in *Furman v. Georgia* 408 U.S. 238 (1972)—the case that outlawed the death penalty temporarily—our legal director, Sanford Jay Rosen, wrote, "The death penalty, clearly suspect under the Eighth Amendment, is unnecessary in a society with adequate alternative means of fulfilling the legitimate objectives of the penal law. It is therefore unconstitutional. The death penalty and the necessarily associated experience of death row shocks and devastates the consciences of civilized men. It is therefore unconstitutional." We hold the same position today.

General public abhorrence of the death penalty is revealed by the prohibition and narrow limitation of capital punishment in statutes; the frequent reversal of guilty verdicts for technical errors; a shrinking, geographically isolated number of states permitting it; fewer juries imposing new death sentences; and fewer states carrying out executions previously ordered. The numbers have constitutional significance. The United States Supreme Court has held that uncommon sentencing practices can become so rarely imposed that they are barred by the Eighth Amendment's ban on cruel and unusual punishment. We believe Nevada is so positioned.

The death penalty is an archaic form of punishment and unnecessary in our justice system. We encourage you to support A.B. 237.

**Chairman Yeager:**

Members, I am going to take some questions. I have questions from a few members so far. If you have a question for a particular presenter, that would be helpful. If not, we will ask that one presenter be designated to answer the question.

**Assemblywoman Jauregui:**

My question is for Mr. Coffee regarding some of the statistics he gave. You said there was a cost of an extra \$500,000. Is this per capital punishment case or for those 186 offenders who were sentenced to death?

**Scott Coffee:**

Every time a death penalty notice is filed, there are additional costs that come into play. For a case where the death penalty is not sought but a murderer is placed on the row for life without parole, or "death by incarceration," the cost of the case is estimated at \$775,000. When the death penalty is sought but not imposed (imposed means by the jury on the front end), the lifetime cost is \$1.2 million. Those 175 cases where it was sought have an additional cost of \$400,000 or more. When the death penalty is handed down but not imposed, the cost goes up another \$100,000 before we get to postconviction costs. You have a cost differential of somewhere around a half million dollars every time a notice of intent to seek death is filed. They are only coming down with a sentence of death in about 15 percent of the cases.

**Assemblywoman Jauregui:**

Those 186 cases you talked about cost \$500,000 more. In addition to those, the other cases sought the death penalty but did not necessarily impose it?

**Scott Coffee:**

The 186 cases were where a sentence of death was handed down by a jury. In that situation, a person is more likely to die of natural causes or suicide than they are to be executed, even if they volunteer. We have had 16 people who died of suicide or natural causes and only 12 who were executed. Eleven of those were volunteers, so you are ten times more likely to die of natural causes than you are to be involuntarily executed. The 175 are death notices filed in Clark County since January 2005. That is about a quarter of our recent history in

terms of the death penalty. You can multiply that number by whatever it might be, and you can figure we have sought the death penalty 600 to 700 times. That is a reasonable estimate. The costs are imposed every time you file the notice of intent to seek the death penalty because somebody has to investigate it and it is almost always on the county dollar.

**Assemblywoman Jauregui:**

I did the math for the 186 cases that were sentenced and that is \$93 million. I find it hard to believe that we spend \$93 million dollars on sentencing people to death and we spend \$1,000 each on victims for counselling.

**Scott Coffee:**

That might be a place to divert some of that money.

**Assemblyman Wheeler:**

Thank you for allowing me to make a statement to Mr. Johnson. I take great exception at your coming in here and telling the members of this Committee what it means to be a conservative. I have a high Nevada Policy Research Institute (NPRI) rating, one of the highest in the building, and a high American Conservative Union (ACU) rating—one of the highest in the building, as do other people on this panel. If you want to tell me what it means to be a conservative, come to my office; do not come in here and put it on the record. Get your own chops—I have made mine. It takes more than pinching pennies to be a conservative; there is also a social side of that. Thank you, sir, for listening to me.

I have a question for Assemblyman Ohrenschall. Thank you for answering our questions. We have seen a lot of studies that say there is no deterrent value. I looked it up and came up with five or six studies that say exactly the opposite: one from the University of Colorado, Denver says that for every death sentence that is commuted, five more homicides happen. There is another one at 18 murders, another at 3, another at 5, and another at 14. I wondered if you would concede that there are studies on both sides of the issue that show opposite results.

**Assemblyman Ohrenschall:**

I have not seen those studies, and I do not know how old they are. The studies that I, as well as others presenting, have cited have not shown a deterrent effect in jurisdictions that have capital punishment as opposed to jurisdictions that do not. I am happy to look at any studies you would like to send me. Anecdotally, last year in Clark County we had the highest homicide rate in the history of Clark County, and we have capital punishment on the books. We just spent \$800,000 on a new execution chamber at Ely State Prison. That is not a study, but anecdotally I do not see the deterrent effect working in my county. Mr. Coffee might also have more information on that.

**Scott Coffee:**

There are some studies that show a deterrent effect, but most of those studies are decades old. In the '70s, when the death penalty was brought back pursuant to *Gregg v. Georgia* [428 U.S. 153 (1976)], there were some claims that every capital sentence saved 6 to 8 lives.



That has not proven to be the case. Recent studies have refuted that; our 40-year history since then has refuted that. There was a survey of criminologists—these are not defense attorneys defending capital defendants, but criminologists who work within universities—where about 88 percent concluded that there was no deterrent effect to the death penalty. There is a minority opinion of about 10 percent that there might be deterrent, but to get 88 percent of people to agree on anything is a neat trick.

**Assemblyman Wheeler:**

I would be happy to send you this article from the *Washington Post*, which quotes from 2001, 2003, 2006, and 2009. That was not decades ago.

**Chairman Yeager:**

Assemblyman Wheeler, I would invite you to share that study with the rest of the Committee as well. We would likely find it useful.

**Assemblyman Wheeler:**

It is a news article from the *Washington Post* that quotes these studies—a very "conservative" paper.

**Assemblyman Fumo:**

Ms. Portaro, I want to tell you that I was in the courthouse when you forgave your son's killer and sat in muted anguish as you spoke the words, "I have been sentenced to a lifetime of grief." You personified the phrase, "To err is human, to forgive divine." My question to you is that you said the district attorney's office was not happy when you went to them and asked them to remove the death penalty. Did you feel pressure in any way to seek vengeance rather than justice? Did you feel pressure from the district attorney to keep pursuing the death penalty rather than life without parole?

**Cynthia Portaro:**

Fortunately, my prosecuting attorney is a lifelong friend. Our boys grew up together. I know him very well, and he knew me. For him to even have the case was a godsend. He had a personal relationship with my son. When I went to him, he was not happy about it. He said this was not good. My husband's family was not happy with me. That decision that was made was not just mine alone. I went to my children and I told them, "This is what I am thinking; this is what I am feeling." My children agreed with me and said, "Mom, we do not want this." As far as pressure, no, he did not pressure me. I know the process now, and I was able to help make that decision. For me, that brought closure to my family, not vengeance.

**Assemblyman Fumo:**

Mr. Coffee, I would like to get deeper into the cost. You said it goes from one attorney at \$100 per hour to two attorneys at \$125 per hour so we are looking at \$250 per hour. Can you tell the Committee about the other things involved, not just the investigator, but also the social worker, the neuropsychologist, the psychological tests, and so on?

**Scott Coffee:**

Death penalty work is the only area that requires a certification for Nevada lawyers. It is governed by Supreme Court Rule 250. There is a panel or group of people that have to be involved in the preparation of a death penalty case. It goes from having one attorney at \$100 an hour. Attorney hours are vastly different. It is 400 hours on average to resolve a noncapital case. It takes 1,800 attorney hours on average to resolve a capital case, according to a UNLV cost study conducted by Terance Miethe. Because death is different, because we do not get do-overs in a death case if we make a mistake, there is a heightened level of due process. We talked about life history, but it is literally childhood: I am interviewing fathers, mothers, grandfathers about alcoholism and all kinds of things. The decision whether to impose the death penalty is different than any other decision a jury makes. Every other decision is governed by law and they are given a set of instructions. For the death penalty, it is a moral decision. Each individual juror gets to make a moral determination of whether that person deserves the death penalty. Because of that, what might resonate with a juror might be different in every case. For example, somebody might not like the fact that he was cut from a high school baseball team. I do not know what is going to resonate with a jury. I have to investigate everything—whether it is abuse, alcoholism, or a death in the family. Those numbers go up substantially.

There are certain procedures that are unique to death penalty cases that are not present in any other cases. In a case called *Atkins v. Virginia* [536 U.S. 304 (2002)], the Supreme Court said that you cannot execute the intellectually disabled. That is only an issue in a capital case. The states tried to shut that down and narrow that to some extent, but it has not worked. The Supreme Court issued a decision yesterday in a case called *Moore v. Texas* [581 U.S. \_\_ (2017)] that said the states have to abide by prevailing psychological norms in determining intellectual disability. I have to investigate that any time a person has a poor school record or any time there is a history of poor testing. The determination for intellectual disability includes looking into how they were acting before they were 18 years old—something called "adaptive behavior." Did the onset happen before 18? I have to go back and investigate that. I have to pay a psychologist or psychiatrist to investigate that. That is happening in 40 to 50 percent of the cases coming into our office; we are looking into *Atkins* claims. We are presenting *Atkins* claims in about a third of the cases that come through our office. Generally, the state has to employ an expert. That will run into \$10,000, \$50,000, or \$100,000 by the time we have done all the testing.

You have to look into things like fetal alcohol syndrome. There was a case in the Ninth Circuit Court of Appeals where the attorney did not investigate poisoning of groundwater where the person had grown up and the Ninth Circuit reversed for ineffective assistance of counsel because the counsel did not look into whether there was poisoning from pesticides in the groundwater. The point being: I have to look at everything and if I do not, the case is reversed. It is not as if you can say, "We just will not fund the defense. Let us have a free day of this and put everybody up for it." You cannot do it because if you do, the

cases come back. If you look at the older cases, the reversal rate is much higher than what Mr. Pescetta talked about because not much was done on capital cases 40 years ago. It got better 30 years ago; it was better 20 years ago, and we are getting better now. I expect it will be better in the future, but those costs continue to escalate.

**Assemblyman Watkins:**

You said the question for a jury as to whether to sentence someone to death is a moral one. What happens in jury selection when somebody says he is morally opposed to the death penalty?

**Scott Coffee:**

That is part of the unfairness of this whole system. If you are morally opposed to the death penalty, you are removed from the jury venire; you cannot sit on a death penalty jury. What that means is 20 to 30 percent of our panels are flat-out removed because they say they have an objection to the death penalty, so you do not get a cross section. Studies have shown that capital juries are more likely to convict on a case, overall, because of this preselection. The fact is that people who are in favor of the death penalty or consider the death penalty are also more likely to convict. There is a strategic reason from a prosecutor's prospective. I do not think they do these things strategically; I think they have good hearts in the vast majority of cases. There is a strategic reason to "death-qualify" a jury because it increases your likelihood of conviction and you eliminate a good cross section of the population, including devout Catholics and many people of color. It just removes those from the pool.

**Assemblyman Pickard:**

I find it interesting to see the level of hyperbole in the room today. It brings into stark contrast the schizophrenic approach to how we view life, killing, and the roles of punishment, morality, judgment, forgiveness, and justice, particularly religion and faith in the law, or faith that should be removed entirely from government. I will add to what Assemblyman Wheeler suggested: I reject out of hand some of the premises stated thus far. For instance, the idea that killing more than one person is worse than killing only one—it is killing. I reject the notion that the legislators seated here are irresponsible, whether they be sitting here now or in the past, because the death penalty remains. I reject the idea that the judicial system has a 50-percent failure rate. It sounds to me like the appeals worked; the system works. Not in every case. Are there convictions of innocent people? Yes. I applaud the Innocence Project and others who find those, but they would not make the paper if it were a common occurrence. I think the judicial system, particularly the public defenders and the prosecutors, do a phenomenal job with what they have. It is an imperfect science, but they try as much as they can to use science. I do not disparage them for doing their jobs.

The elephant in the room is the idea that the death penalty goes beyond the idea of deterrence. There is also the idea of a penalty—it is called a "death penalty." We have historically reserved it for the worst and most heinous crimes. Because this is a fundamental social question, I am wondering why are we not putting this to the voters to decide?

**Chairman Yeager:**

Although that is not the question in front of us today, you may speak to that if you would like. The question for this Committee is the policy of A.B. 237.

**Assemblyman Ohrenschall:**

Many people have beliefs of faith and moral beliefs about capital punishment. The arguments that I am particularly interested in and I hope the Committee will look at are the proven lack of deterrent affect toward violent crime and the incredible financial burden to our taxpayers without the expected outcomes, where death penalty cases that are sought are, in effect, life without the possibility of parole or "death by incarceration," as one of the witnesses said. Lastly, I would ask the Committee to remember the impossibility of actually implementing an execution. On NELIS there are letters ([Exhibit C](#)) posted from the different pharmaceutical companies as to their lack of willingness to provide these chemicals to any state department of corrections. As to how laws are made, our state provides that we can enact legislation either directly through the voters by initiative referendums, but our federal *Constitution* guarantees our constituents a republican form of government, and that is why we are here: to represent our constituents and make these decisions.

**Assemblyman Hansen:**

I would be willing to support the bill if you add one amendment to it: that you put this on the ballot as a referendum. I did a little homework. In a very liberal state like California, in 2012, they had the issue on the ballot and the people of California overwhelmingly supported keeping the death penalty. In 2014, in Nebraska, the legislature passed an abolition of the death penalty and then it was placed on the ballot. The result was 66 percent of voters were in favor of keeping the death penalty. In spite of the hyperbole, I think people actually do support the death penalty. I would want to have that offered as an amendment. I deeply resent the idea that people who have been victims of murders and therefore want justice are filled with hate and vengeance. It is shocking that some would use that terminology. I do not believe that people who have gone through that should be labeled as horrible, guilty people who have an evil motive. I think what they are trying to do is get justice. Anybody who reads the Fifth Amendment can see it clearly says, "nor be deprived of life, liberty, or property without due process of law." Being deprived of life is capital punishment. We have a due process of law. The argument that this is somehow unconstitutional makes no sense if you actually believe in following the original intent. The real reason we have lost, to some extent, the deterrent value of the death penalty is because liberal, activist judges have used the system for so long now and created so many layers of appeals that it does lose its value. It takes decades for an execution to actually occur. I looked up the Charles Lindbergh case and other cases like that. Within a year after conviction and appeals, the executions occurred. If you look at the numbers in the United States, the death penalty did have a deterrent effect. It did not lose its deterrent effect until we decided to drag it out on appeal for decades. I do not understand why it is so humane if a 21-year-old commits a murder and you keep him in a cage for 70 years. How is that more humane? Why should we say that is the right thing to do, rather than what has been justice for time immemorial in Western societies?

**Chairman Yeager:**

As this Committee knows, we cannot speak as a legislature on the constitutionality of the death penalty or how it is applied or enacted. We will leave that to our co-equal judicial branch. Assemblyman Hansen, I took the testimony a little differently. I thought the testimony was that leaving someone in prison for life was less humane; that it is more of a punishment than executing him. I could be wrong, but that is how I took the testimony.

**Assemblywoman Krasner:**

You say that the implementation of the death penalty is a moral judgment. Is it not also a moral judgment when a criminal brutally murders a victim?

**Scott Coffee:**

I wish it were that simple. The fact of the matter is that I have represented these people for 20 years, and I have yet to meet someone who makes a moral, weighted decision. We assume that these people are acting as rational people, that they make a weighted decision, and that if the death penalty is on the books, then they are not going to commit this crime. That is not how it works. Most of the people who are charged with this are high, they have mental illness, or they have extreme anger problems to the extent that they are out of control. A few planned killers make a moral judgment. Nobody is going to say that it is right. It is wrong and they should be punished. They should be punished by death by incarceration as opposed to the death penalty. The death penalty has failed in Nevada for 40 years. We have tried to fix it for 40 years. We have executed one nonvolunteer out of 186 sentences. With that kind of inefficiency, I do not know how we continue to support it.

**Assemblywoman Krasner:**

You talk about money and budgets. Are the public defender's offices going to slash their budgets if this bill passes, and is there any evidence of drastic budget cuts in the jurisdictions that have abolished the death penalty?

**Scott Coffee:**

I do not know. The budgeting is done by the county. I am not the public defender; I simply work in a unit at the public defender's office. If we were not handling these capital cases, I would assume the money could be assigned elsewhere. That is my assumption, but that would be up to a different body, not me.

**Assemblywoman Krasner:**

Without slashing budgets, where is the real savings?

**Scott Coffee:**

I did not say that. The money could be allotted to victims' families for counselling or to putting more law enforcement officers on the street; that would certainly be in play if this were cut. Should our budget go down? Yes—our budget should go down if the death penalty is off the books. However, I do not make those decisions.

**Chairman Yeager:**

We are going to move on to opposition testimony at this point. We have a number of people signed in, so I would ask everyone, to the extent possible, to keep your comments as brief as possible so that everyone has a chance to say something on the record.

**Lynn Chapman, State Vice President, Nevada Eagle Forum:**

I am also representing my family and myself today. If you look in the Bible to Genesis 9, God gave Noah the first governmental ordinance. He said that if a man willingly takes another man's life, he must give his own in his stead. Murder is always a hate crime. It is based on greed, anger, and jealousy. It is always based on hatred. I heard the word "unfair" and I thought, Yeah, it is unfair that I will never get to see my brother again; I will never get to talk to him. He got to see and know one of his grandchildren, but he did not get to meet the other four grandchildren. My brother was killed by somebody who hated him. It was overwhelming to our family. He was on the way to work one morning. This man hated my brother because this man had done a lot of ugly things to other people. They worked at a logging mill. My brother worked at his job for 40 years as a senior scaler, figuring out board feet in the logs that came into the yard. A log loader is a huge machine that goes up to the logging trucks and takes the logs off of the trucks and brings them into a pile in the yard. This man had the log loader in the employee parking lot, which is against the law. He waited for my brother to come to work. My brother was less than 50 feet away from his parking spot and that man backed the log loader over my brother. That is a horrible way to go.

It does not seem fair at all for my family to have to go through that. There does not seem to be any responsibility or accountability. People always have an excuse for why they do things. I feel like putting them into a cage is almost like time-out. It is terrible what people do to each other.

Thank you, Assemblyman Hansen, for saying what you did. Thank you, Assemblyman Wheeler, for saying what you did. Heck no, I sure do not support this bill. I have forgiven the man that did this to my brother. Luckily, my sister-in-law was smart. They were trying to sweep this whole thing under the rug because it was a small town and a big employer. She did win a wrongful death suit of \$1 million. At least somebody got something, but it does not bring back my brother. I am not in favor of doing away with the death penalty; I do not think that is the right way to go. Speaking from the point of view of a victim's family, please hear us. It is an insult.

**Chairman Yeager:**

Thank you, Ms. Chapman. We are very sorry for your loss. Thank you for being here to share with us this morning.

**Christopher J. Hicks, District Attorney, Washoe County District Attorney's Office; and representing Nevada District Attorneys Association:**

I speak on behalf of the 15 district attorneys who are not here today. I offer a northern Nevada perspective of A.B. 237. When I am done, I will defer to District Attorney Wolfson to give you the Clark County perspective. I sit here in strong opposition to the bill.

The United States Supreme Court has ruled that the death penalty is constitutional; it is not cruel and unusual punishment. The Nevada Supreme Court has ruled the same. The statutory scheme that this very Legislature has adopted and enacted that allows for prosecutorial pursuit of the death penalty currently restricts it to the very worst crimes so that it cannot be used arbitrarily. Just last session, this very Legislature appropriated \$860,000 to create a modern facility where lethal injection could be administered. Polls show that a strong majority of Nevada citizens, my constituents and yours, strongly support the death penalty.

The death penalty is not misused by prosecutors in the state of Nevada. Throughout all of our counties, the decision to seek the death penalty is made sparingly and judiciously. It is reserved for the very worst of the worst. In Washoe County in the last 20 years, my office has prosecuted over 300 murders. In that same time frame, we have sought the death penalty only five times, or 1.7 percent of the time. Those five cases, two of which you will hear about in a moment, present facts that are so horrific, so unthinkable, that they are difficult to hear or even believe.

Much has been referenced of the audit that was done in 2014. The ultimate conclusion it reached is that it costs three times more for a death penalty versus a non-death penalty case. I question the legitimacy of these numbers and I will tell you why. The very first page of the audit offers a forewarning that says, "Much of the information was based on unverifiable estimates provided by various entities." These are not hard numbers; these are estimates. I can represent to you that in the last two death penalty cases that were prosecuted in Washoe County in the last ten years, my office handled those prosecutions. The Washoe County Public Defender's Office handled the defense. In both of those cases our budgets were no greater and no less because of that case. We did not go to the county commissioner and ask for more money; they were simply absorbed by our budgets. Had the cases been life without, it would be the same cost, the same effect. To the appeal process: my office has an appellate division and so does the Washoe County Public Defender's Office. They, too, handle that at no additional cost. What this audit did was it took the time to look at the number of appearances that my office made at different death penalty cases and then added that up to come up with some numbers. The reality is it was just my budget; it is not additional costs.

For the sake of argument, let us accept what the study says, that it is three times more expensive to try a death penalty case than a life-without case. What that means is that in Washoe County, less than 2 percent of the time we spend three times as much money. That is less than 2 percent of the time. In light of the severity of those cases and the depravity exhibited by the accused, such a cost is minimal at best. Simply put, true justice sometimes costs a little more.

You cannot place a price on a victim's life or the justice that they deserve. Victims and their family members cannot be overlooked in debating this bill. In the last ten years, my office has sought and received from the jury the death penalty two times. Those defendants were James Biela and Tamir Hamilton. I am going to offer a brief synopsis of the facts of those

two crimes that will fail to truly encapsulate the horror of these two cases and the horrific impacts they had on the victims' families and our community. Yet, they are so important to consider today because A.B. 237 will not only eliminate our ability to seek the death penalty in these astonishing types of cases in the future, but it will also commute the sentences from those two cases and all others in this state to life in prison, allowing them a life of room, board, health care, and social interaction—simple luxuries that none of these victims ever had. Moreover, it will commute the sentences of verdicts that were given by a jury from our community and relied upon by the victims' family members.

Mr. Biela had three female victims. All were college-age students attacked near the University of Nevada, Reno. He violently raped his first victim on the concrete floor of a parking garage at gunpoint. Using his training in jiu-jitsu, he choked out and kidnapped his second victim, sexually assaulting her numerous times in his truck. Lastly, he abducted 19-year-old Brianna Denison from her friend's house. He raped her and choked her to death with a pair of underwear. He then left her naked, lifeless body discarded like a piece of trash in an empty lot covered by a Christmas tree that someone had disposed of in that lot.

Tamir Hamilton had two victims. Two weeks before his brutal murder of Holly Quick, he randomly attacked and repeatedly raped a 20-year-old who had stopped by her brother's apartment to do some laundry. Hamilton fled when the brother tried to get through the locked apartment door. His second victim, Holly Quick, was only 16. In September 2006, she returned to her mom's residence after attending a local high school football game. She said goodnight to her mom and went to her room to go to bed. The next morning when her mom went into her room to rouse her, thinking that she had overslept, she found Holly. The lower half of her body was naked and hung oddly off of the bed. Her throat was slit so severely that she was nearly decapitated. There was blood everywhere. She had been raped. She had been tortured. She had 40 separate stab injuries to her neck, jaw, and shoulders. Her mom found her.

Family members of both of those victims are here today in opposition of A.B. 237. I would like to recognize them. Lauren Denison, Brianna's aunt, is here on behalf of Brianna Denison's family. Her mother, Bridgette, and her brother would like to have been here as well, but they had a preplanned trip together celebrating what would have been Brianna Denison's twenty-ninth birthday. Holly Quick's father, Thomas Quick, is also present today. Her mother, Patricia Doss, is also here on behalf of Holly's family. The impact of these horrific crimes on these wonderful families is immeasurable. We have a duty to empathize with them. We have a duty to try and understand just how hard it is. We have a duty to support them. These considerations are supremely relevant when proposing a bill that will eliminate the death penalty, and more importantly to them, would commute the very death sentences that were delivered to these monsters to life in prison. They do not wish to provide testimony today; coming here is hard enough for them. I wish to share some small portions of the victim impact statements they made to the very juries who gave the death penalty to their loved ones' murderers. Portions I will share with you



reflect the impact the crimes had on them. I can represent that the remainder of the impact statements, which I will not read today, deeply reflected the character and the magnificent qualities of Brianna and Holly. The first comes from Brianna's aunt, Lauren Denison. These are the statements made to the juries presiding over those murders.

The reality is that no matter how much we write or how long I could stand up here and speak to you, we would never be able to convey to you the beautiful soul that Brianna was. All of our family members wrote beautiful statements, but I would be up here for days if I read them all. We realize you did not know her or have the opportunity to love her, but we did and we will forever be grateful. The pain and devastation to our family is beyond measure. I just want to thank you guys for finally bringing Brianna some justice. Thanks.

The next came from Robert Zunino, who is Brianna's grandfather.

Most of you have children or close loved ones. I hope you and everyone in this room never has to go through the experience—the horror, the pain, the sorrow—that my family is going through and has gone through these past two years. Also, hopefully the decision that all of you make today or tomorrow will bring justice and peace to my little Brianna.

This is from Brianna's mother, Bridgette Denison.

James Biela, I am here before you today as a person who has suffered more tragedy than any mother should ever live with. How you have single-handedly impacted me, my only son, my parents, my brother, and the many others that have been there for me can never be put to words. It is not something that words were ever meant to describe. It sickens me to think that my poor baby girl was alone with you for the last minutes of her life. I will never know what it feels like to see my daughter complete her life's journey.

The next statement I would like to read is the victim impact statement from Tamir Hamilton's case. This was given by Tom Quick, Holly Quick's father.

When I walked into the police station and gave my name at the front desk, I saw a sad look on the officer's face. On the ride up the elevator, the detective told me that Holly, my daughter, had been murdered. In that moment nothing felt real anymore, like this was all a dream. I no longer felt my legs moving as we went to the questioning room. From the questioning room to the waiting room I cried so much that all I can remember is a pile of tissue and sad faces looking at me. The shock was turning into learning to breathe again. I find myself saying, "Why didn't he just kill her? Why did he have to stab her so many times? Why did he have to rape her?" Then I stop myself and think, What a terrible thing to say about my own daughter. To survive day by day is a fight to temporarily forget about Holly, so that

I can be around people and not think, Where is my Holly, and start crying again. I want to be able to remember her whenever I want to, not the pictures we have seen here that are stuck in my head, but her smiles. That has been taken away forever. Holly was a big part of me. Now I am a broken man that is looking for the day that I can be with her again in heaven with no one to tear us apart. I do not know what to do now.

Lastly, I want to share with you a portion of the statement made by her mother, Patricia Doss.

I used to tell Holly when she was small, "Don't say can't, say can," and she would say, "I will try." Now I find myself saying, "I can't." I cannot put into words how this horrible act has impacted my life and so, like her, I say, "I will try." I had so many dreams for her and now I am afraid to dream. I am afraid to sleep. I was asleep while my daughter was too afraid, too terrified to scream out, too terrified to scream for help. I was right there and I did not get a chance to protect my daughter and now I do not get a chance to watch her grow up. I always gave her a kiss goodnight. Where is my kiss now? When she was a baby, I would put a kiss in the palm of her hand before she went to bed and before she went to school. Now I am forced to kiss a stone memorial that is at her grave.

I will tell you after Ms. Doss' victim impact statement, the 911 call she made was played for the jury. I can tell you that is the most chilling and heartbreaking 911 call you will ever hear and never forget.

As President of the Nevada District Attorneys Association and the elected District Attorney for Washoe County, I strongly oppose this bill. It does not take into account the will of the people of Nevada, and it argues for placing a price on justice for victims. In the face of the support of the death penalty in Nevada, the judicious manner in which it is sought and the investments we have made to administer it, what we should be doing here today is taking steps to fix our death penalty system, not simply throwing our hands in the air and walking away. The victims deserve better than that.

**Chairman Yeager:**

We have to take the bills as presented. I do not think there is anything wrong with the Committee examining the policy behind this bill, but I think your points are well taken and I appreciate your being here.

**Steven B. Wolfson, District Attorney, Clark County District Attorney's Office:**

In the interest of time, I had a lot to say, but I do not think I am going to be able to get through it all, so I am going to move fast. Mr. Lalli will offer some statistical information. There are six or seven people who have flown into town who are victims' family members. It would be terrible if we did not give them an opportunity.

**Chairman Yeager:**

We can do that. We do have the reality of a limited amount of time. I can tell the Committee that we have about 45 minutes from this point to get through all the testimony. If you could keep your comments as brief as possible, and we will call folks up afterward. We will have to put some time limits on that, but it is important for everyone to be able to come to the table and at least get their name on the record in either support or opposition.

**Steve Wolfson:**

I am the Clark County District Attorney (DA), and on behalf of the Clark County District Attorney's Office, we oppose this bill, and I would like to tell you why. It is worth noting that in Clark County the decision to file the notice of intent to seek the death penalty is my decision and mine alone. We have a committee of respected attorneys who meet to determine whether to file this notice. These are earnest, serious, solemn meetings, but at the end of the day, the decision is mine. Before taking office over five years ago, I was a criminal defense attorney for 25 years. During those 25 years, I represented a number of persons charged with murder, including capital murder. I am not a career prosecutor. A lot of people talk about career prosecutors having a narrow vision or narrow view of things. I was a criminal defense lawyer longer than I have been a prosecutor.

Before taking office over five years ago, my predecessor filed the notice of intent to seek the death penalty in an average of 20 cases per year. When I took office, I pledged to reduce that amount because I thought it was the right thing to do. I have done that. In my five years, we have filed the notice of intent in less than 50 percent of the cases of my predecessor. I am not criticizing my predecessor—we are all different and view things differently. In my opinion, a change needed to come to Clark County. That is why we have filed 50 percent fewer death penalty notices in the last five years. Why? I am going to use the phrase that so many people seem to throw around so casually—"the worst of the worst." It applies, but it has meaning too. There is another phrase that I have heard in this industry—"garden variety," the typical type of murder case. I do not like that because, as somebody has already pointed out, no murder is pretty and no murder is just. But there are different kinds of murders and different kinds of people who commit murders. It is not just the event of the crime itself that we base our decision on. It is a variety of factors—a person's background, a person's criminal history, whatever mitigation is presented to us prosecutors—recognizing that we only have a short period under Nevada law to file the notice. We have 30 days after a case reaches the trial court. That is a very short period. We are trying to do something about that. I am on a Supreme Court commission that is looking at changing some of the rules to make it better so that the decision whether to file can be delayed to give the defense lawyers more time to present us with mitigation. That is something that is being discussed by the stakeholders.

The citizens of this state strongly favor the death penalty. A recent poll conducted by the Mellman Group said almost 70 percent of Nevadans favor the death penalty. There are a lot of polls. There are a lot of studies. There are a lot of writings. You can find somebody with a differing opinion and a different poll on almost any subject matter. In Nevada, a recent poll by a recognized pollster found that almost 70 percent of Nevadans support the death penalty.

I work for those people. As an elected official, I have an obligation to ensure that their voice will be heard. If I was presented with polls that showed only 30 percent of Nevadans support the death penalty, I might do something as the Clark County District Attorney because I do have the power to say no. When almost 70 percent of Nevadans still support the death penalty, I have an obligation to seek the death penalty in appropriate cases.

It is not appropriate in most cases, but it is necessary to give the jury the option. District attorneys do not find the death penalty once somebody is convicted of first-degree murder; juries do. We have an excellent defense bar in Clark County. Mr. Coffee, you are one of the finest lawyers in Clark County. He does a great job of representing his client. He has a number of colleagues that do the same thing. At the end of the day, a jury determines whether to impose the death penalty. Usually we seek the death penalty in killings involving children, police officers in the line of duty, where extreme torture or mutilation is involved, or where there are multiple decedents. The criminal justice system relies upon graduated punishment. If the appropriate punishment for a particular murder is life without parole, how do you punish a person who commits multiple murders? How do you punish a person who has committed a murder in another state, is serving life without parole, and because of timing is able to commit another murder? Do we give him another life-without-parole sentence? Our system is based on graduated punishment.

In Clark County, the death penalty is used appropriately. When I am done with my remarks, Mr. Lalli is going to talk about the statistics. So much discussion has occurred today that if we abolish the death penalty, money will be saved. I ask each of you to look closely at that statement. I do not believe we will save money if we abolish the death penalty. If the death penalty is eliminated, the focus will simply shift to life without the possibility of parole. Life without the possibility of parole will become the new death penalty.

Defense attorneys and judges will say a potential sentence of life without the possibility of parole creates a more significant defense obligation than in any other case because now that is the worst. Defense lawyers are going to have to spend the same money, fight the same fight, to avoid the ultimate punishment. We will hear things like, "It is the duty of defense counsel to lead the team in conducting an exhaustive investigation into the life history of the client." We hear that in death penalty cases. We are going to hear the same thing in non-death cases, and we have already heard those same things. We have affidavits from defense lawyers representing noncapital murder clients. "It is the duty of the defense counsel to lead the team in conducting an exhaustive investigation into the life history of the client." It is not going to change. Now life without parole, if you abolish the death penalty, will be the most extreme penalty. "It is incumbent upon the defense to interview all relevant persons and obtain all relevant records and documents that enable the defense to develop and implement an effective defense strategy." We have already heard that in noncapital cases, and I guarantee you we will hear it if you abolish the death penalty and the same costs will exist.

They said we could not obtain lethal drugs. I do not believe that is accurate. The law provides, in *Nevada Revised Statutes* 176.355, that "The Director of the Department of Corrections shall . . . Select the drug or combination of drugs to be used for the execution after consulting with the Chief Medical Officer." I have met the Director of Corrections, Mr. James Dzurenda. I have met personally with the Director and had two conversations with him. He tells me that, should he receive an order of execution, he believes he will be able to find the drug or combination of drugs to carry out an execution. When you hear that the drug is not available, I do not think that is accurate. I would invite you to ask Director Dzurenda yourself.

I have sat here for two hours, and it has been a pleasure. This is a pleasure to come here and speak. Some of you are my friends and I respect all of you, but I heard something that was so insulting. Somebody accused my office and me of a "dog-and-pony show" put on by the DA's office in death penalty cases. I am sorry sir, but that is insulting. I have excellent prosecutors that seek justice for victims. To call it a "dog-and-pony show" is insulting.

Each of us is entitled to our moral opinions on whether we as a society should take another human's life. There are two things going on here. There is the moral angle and the legal angle. We are each entitled to our own moral opinions. I may agree or disagree with some of you, and that is our right. I respect people who disagree with me. Legally, it should remain an option. Most Nevadans want a jury to have the death penalty as an option, and removing it will not save money. As my esteemed colleague Mr. Hicks said, should saving money be the reason to abolish the death penalty? I say no. As Mr. Hicks said, How about reforming a process, both before and after a trial, where a plea of guilty would reduce costs without eliminating a form of justice. In my travels and discussions, most people who complain about the death penalty complain about the fact that it is taking so long and we are not accomplishing it. It is not because we do not return a verdict of death; we are just not getting it done. It takes 10, 15, 20, or 30 years. How about looking at that process? That is what people are complaining about. They are not complaining about the death penalty; they are complaining we are not doing it. How about looking at the process? How about looking at the state appellate process and the federal appellate process? Somebody quoted the Lindbergh Trials, where somebody was executed a year after. I am not suggesting a year. In Clark County, I am part of a panel put together by the Supreme Court justices. Mr. Coffee is on my subcommittee. We are looking at reforms, at getting cases to resolution quicker. That is what people want. They do not want to abolish the death penalty. They want justice quicker, balancing the due process rights of the defendant.

**Chairman Yeager:**

After Mr. Lalli speaks, I am going to take some questions from the Committee for the prosecutors. I do not think we will have many questions, but there are a few, and then we will take additional testimony.

**Christopher J. Lalli, Assistant District Attorney, Clark County District Attorney's Office:**

I have been employed at the Clark County Office of the District Attorney for 23 years. I am currently in administration, but for a good part of my career, I was a homicide prosecutor on our Major Violators Unit. This is a very challenging issue for many people, but it is important, particularly for those in the Legislature, to be mindful of actual and true data. For that reason, I want to touch upon a couple of points. One is the recent audit regarding death penalty costs. I would agree with District Attorney Hicks that we ought to use caution in approaching some of the conclusions of that study. I looked at how they determined that prosecution costs in death penalty cases were higher than in non-death penalty cases. Here is what they say, "The in-court costs of prosecuting a death penalty case was higher than for non-death penalty cases. The differences in costs are attributable primarily to the added hearings in the court record for death penalty cases during pretrial." That is on page 22 of the study. They continue, "The cost of prosecuting a death penalty trial is nearly twice the cost of a non-death penalty case. Since the costs were based on actual court time, costs are primarily driven by the length of the trial." That is at page 25 of the study. There are no additional costs realized by the county, who employs all of us prosecutors and defenders in the majority of these cases, by the extension of time of a trial. Those costs simply are not real. Prosecution salaries do not increase based upon the length of time in a courtroom. Staffing levels have not increased based upon more or fewer death filings. The case must be tried irrespective of whether a death notice is filed in the case. The costs of prosecution that are allegedly more in death penalty cases is not accurate. The same could be said for court costs.

I want to give you another example of how that study estimates costs. They assess the cost for pretrial detention of a death penalty defendant. They say it takes longer for death penalty cases so they should look at the costs associated with housing that defendant in local jails pretrial. They assess that figure alone at \$157,000. Non-death penalty defendants are detained pretrial as well. It is not a cost unique to a death penalty case. Whether a murderer is detained in a jail pretrial or in prison postconviction, society still bears the cost of incarcerating that individual. The cost is no greater in a death penalty case. Respectfully to that study, these costs are invented.

There was a lot of discussion about deterrence, and Assemblyman Wheeler, you are correct; there are studies going both ways. I have many of them that I can provide to the Committee. I did want to talk about statistics. We have provided the Committee with a document ([Exhibit H](#)) titled "Death Penalty Statistics." I want to talk briefly about those as they pertain specifically to our state, to Clark County, and to Nevada's death row. Slide 2 indicates the number of death row inmates separated by race. This is information we did not create but was provided to us by the Department of Corrections (NDOC). I heard a number of speakers in support of this bill suggest that prosecutors target minorities when seeking the death penalty. The facts simply do not bear that out as being accurate. The final slide [slide 4, ([Exhibit H](#))] of this group of charts is entitled "Race of Clark County Death Verdict Defendants 2002-Present." It lists the various percentages as well as the raw numbers of cases in which we have received a death verdict from juries. It is important to consider these

statistics in light of the number of individuals who are actually committing murders in our state and in the country. To do that, I received information from the FBI, the Uniform Crime Report (UCR), numbers that the criminal justice system in every state relies upon heavily. I took the statistics from 2015, which I would suggest is a snapshot similar to other years. In 2015, of the murders that occurred in the United States—there were over 15,000—36.7 percent were committed by African Americans. If you look at the death verdicts in Clark County that involved African-American defendants, that number is 33 percent. We are underrepresenting African Americans in the number of death verdicts returned in Clark County. When you look at the national number of homicides committed by Hispanic individuals, that number is 12.7 percent. These are the FBI numbers. In Clark County, of our verdicts wherein we received a death verdict dating back to 2002, 10 percent of those individuals were Hispanic. Again, that is lower than the statistics showing who has committed murders in our country. Perhaps the most startling figure pertains to white males. The FBI reports that in 2015, of the more than 15,000 murders that occurred in the United States, 30.2 percent of those murders were committed by white males. In Clark County, 52 percent of those individuals wherein a death verdict was received were white males. The suggestion, borne out by the raw numbers, that prosecutors are "targeting minorities" is simply not true.

**Chairman Yeager:**

Mr. Lalli, I do not think that was the testimony—that prosecutors are targeting minorities. I think the testimony was that they were disproportionately impacted. I want to make sure that is clear because I do not believe anyone said that in his or her testimony.

**Christopher Lalli:**

With due respect, I wrote it down when I heard it. A speaker did say that, and there was testimony that it is disproportionally given in the cases of minority members. In both of those cases, that assertion is not correct. The other thing we heard was that the death penalty does not undergo a sufficient narrowing under the laws of the state of Nevada. I want to provide you with the raw statistics that we know. There is a pie chart [slide 3, [\(Exhibit H\)](#)] titled "Clark County Death Verdicts 2002-2015." With respect to the number of murders in Clark County, the source was provided by the Clark County Office of the Coroner/Medical Examiner. They have statistics completed through 2015, so I do not have information that is more current. We look at it in terms of the death verdicts returned in Clark County during that time. From 2002 until 2015, there were 2,288 homicides committed in Clark County. During that period, there were 18 death verdicts returned. That is less than 1 percent. It is a fraction of the percentage of the homicides in Clark County. Based on the raw statistics, I would submit there is an absolute narrowing of those who receive the death penalty in Clark County.

One other thing I wanted to mention was cost. I want to address A.B. 237 itself. One of the arguments we hear often from the proponents of the legislation are the cost savings. There may be some; what that is I could not tell you. As I indicated before, I would use extreme caution in approaching that issue. However, just looking at the bill, I would submit that the cost of prosecuting homicide cases could increase. We can look at the number of defense

attorneys that are required to argue a death penalty case in Nevada today; NRS 175.151 provides that in death cases, the court must allow both defense counsel to argue the case to the jury. That is existing law. What this bill would do is amend that statute to require courts to allow both defense counsel to argue the case to a jury in non-death cases. By implication, this bill would require two attorneys to be appointed in every case. I would submit that is going to be an enormous cost to the counties, particularly the rural counties. The bill addresses the number of defense attorneys required to argue a case on appeal. In death penalty cases, the court must allow both defense counsel to argue the case on appeal [NRS 177.235]. Assembly Bill 237 would require the same in non-death penalty cases.

As Mr. Wolfson suggested, life without parole cases that are routinely handled in our justice system will become the new death penalty. I submit that costs of handling those cases would actually increase from their current levels.

**Assemblyman Watkins:**

I would ask that Mr. Hicks come back up. I want to preface my question by saying this: we elect you to protect us, and you do a wonderful job. I know it is a difficult job where you cannot unsee what you have seen; you cannot unhear what you have heard. I was also elected to ask questions. Some of these questions are going to be difficult, but it is not meant to disrespect your position or the job that you do. I am thankful that you are in the position that you are and doing what you do to keep us all safe.

Regarding the audit that is being quoted, did either or both of your offices have the opportunity to participate in that audit by providing data or input?

**Christopher Lalli:**

Both of our offices did participate in the study. There is a suggestion to that in the study itself. If you look at page 22 it says that "Although the Clark County and Washoe District Attorneys' Offices did not provide estimated or actual hours on our selected cases," with respect to the time required. We did participate in that audit. We did not and could not provide the type of information that the auditor was looking for. We do not ask our attorneys to keep track of their hourly rates as you would in a private firm where those bills are being passed on. There is no scientific way to estimate the hours spent on particular cases. Moreover, we would still have a responsibility to prosecute the cases that we were questioned about irrespective of whether they were death cases. We did provide information as part of the study. I do not think the study captures the challenges that truly exist.

**Assemblyman Watkins:**

Was there any information that was in possession of either of your offices that the auditor requested that you did not provide?

**Christopher Lalli:**

It is my understanding that we provided all of the information that we had to the auditor as best we could.



**Christopher Hicks:**

I was elected in 2015, so I was not the sitting DA when this occurred. Nevertheless, as far as I understand, we encountered the same hurdles that Mr. Lalli just explained. We gave them any data to which we had access.

**Assemblyman Watkins:**

Mr. Wolfson, you indicated that the better approach here may be to address the appeals process and the length of time it takes to get through the appeals process before a death sentence could be carried out. It is my understanding that much of our compliance with the law on the appeal process stems from the United States Supreme Court holdings. This body could not have any impact on that. Is there a line in the sand of where we can have an impact as the legislative body for this state versus holdings that came down from the United States Supreme Court that we have no impact over?

**Steve Wolfson:**

A great deal of the costs that are being talked about are pre-adjudication. Some of these cases take many years to get to trial. In Clark County, we have 330 pending murder cases and 58 capital cases. Of those 330 murder cases, 50 of them are more than 5 years old; 80 of them are more than 3 years old. The point is that so much of the cost is up front. The lawyers have to do their preparation. I think that reforms could be made pre-adjudication to help cut the costs way down but not deprive a defendant of his due process rights.

**Assemblyman Watkins:**

Would those reforms need to come at the federal level because they are dictated by the United States Supreme Court? Is it something that this body could actually address?

**Steve Wolfson:**

I am pleased to say that there are four subgroups under the Nevada Supreme Court's Commission on Statewide Rules of Criminal Procedure. One of them is called the Life/Death Committee, and we are spearheading an effort to address these issues on murder cases. On our own, through the Eighth Judicial District Court, we are taking significant steps. I am pleased that we believe we can enact some new rules to get not just death penalty cases but murder cases to resolution. Most of these cases settle without a trial. Why take five or seven years?

**Assemblyman Watkins:**

According to the data provided in the exhibits we have, the reality is that 13 of the counties in this state effectively have no death penalty. There are no death row inmates and, as far as I can tell, there is nobody even being charged with a crime that pushes them toward the death penalty. We do not have that number. Can you, as the representative for the DA's association for the state, provide the numbers of people who have committed crimes in these rural counties that are death penalty-eligible and whether they are being tried for the purposes of the death penalty?

My last question would be to both of you as well. We have heard some evidence on an unrelated bill about the inadequacy of our jury pools across a cross section of the population of the state of Nevada along either ethnic lines, racial lines, or socioeconomic lines. I wonder if you could address that and whether you believe that inadequacy—or maybe you do not think it is inadequate—has an impact on the likelihood of one person being sentenced to death over another.

**Christopher Hicks:**

I can only speak to that anecdotally. I have done many jury trials in Washoe County, including death penalty litigation. It has been my experience that the jury pool is reflective of our community. I do not believe that those types of issues exist, at least not that I have seen, and I have not read any studies on that issue.

**Steve Wolfson:**

I am aware of a bill or two that attempts to address this. I do not believe there are inadequacies at all. We have a system in place where hundreds of potential jurors are summoned into courts. Especially on death penalty cases, it is the norm to use questionnaires. There is a whole process. Sometimes it takes days or weeks to select a jury. There are literally hundreds of people who do represent a cross section of our community. I do not believe there are inadequacies.

**Assemblywoman Cohen:**

Can you please speak to the services in place for the families of victims? Mr. Hicks, in your role as President of the Nevada District Attorneys Association, if you have information for any of the counties that are not represented here, please provide that as well.

**Christopher Hicks:**

In regard to victim services?

**Assemblywoman Cohen:**

Yes.

**Christopher Hicks:**

Statutorily we can provide a certain amount of money regarding victim services. I have one of our victim advocates from our DA's office in Washoe County here today. She could probably better lay out victim services. I would be happy to have her meet with you afterward if that would be better. We provide victim advocacy from the get-go in all of our cases because we want, first and foremost, to take care of our victims. Excuse me for trying to talk so fast; we have a lot of victims who want to speak today.

**Chairman Yeager:**

That is fine; I do want to make sure we get to other testimony.

**Assemblywoman Miller:**

I have a question for Mr. Wolfson and Mr. Lalli. Mr. Wolfson, you mentioned that in a poll, 70 percent of Nevadans favored the death penalty. I would like to know about the poll. You mentioned that it was conducted by a popular pollster. My question is who was the pollster, how many people were polled, what are the demographics of those people—specifically ensuring that they were actually Nevadans—how and what were the questions, and were the facts about the death penalty presented with those questions?

**Steve Wolfson:**

I actually said "almost 70 percent." In any event, it is approaching 70 percent. This poll was done by the Mellman Group, which my research showed me was a well-respected, well-recognized, often-used polling group. That polling took place between January 12 and January 15, 2017. I have a variety of the statistics broken down. In the interest of time, I did not go through all of those. For example, 66 percent of the voters polled support keeping the death penalty in Nevada; 59 percent said they strongly supported the death penalty. The demographics are divided between Republicans, Independents, Democrats, young and old; and I could go on.

**Assemblywoman Miller:**

When you say, "almost 70 percent," is that almost 70 percent of 200 people or 2 million people? You are saying "almost 70 percent of Nevadans." I need to hear the number of people who were polled and the demographics of those people.

**Chairman Yeager:**

In the interest of time, perhaps you could provide the Committee with the information about the poll.

**Assemblywoman Miller:**

Mr. Lalli, I am looking at the pie charts that were provided. Going back to your concern about the impression that the counties were targeting black defendants: it says, regarding the race of Clark County death verdict defendants, 2002 to present [slide 4, ([Exhibit H](#))], 33 percent were black, with the actual number being seven. However, when I look at the race of current Nevada death row inmates [slide 2], that number for black people increases to 37 percent and increases from 7 black defendants to 30 black defendants. The integrity of numbers is when we are looking at them holistically and quantifiably. At 37 percent we could say that is less than whites, but our Clark County community is around 12 percent black.

**Christopher Lalli:**

I think your statistical information is correct, but I think it is an error in reasoning to say we are going to compare the people on death row with the population in the state, because not everybody in this state commits murder. We look at the number of murders and the racial makeup of the offenders of those crimes when we talk about statistics. I hope nobody is

getting hung up on the word "targeting," but whether the result is we are putting more minority members on death row than proportionately those who actually commit murders, without any doubt at all, the answer is no, we are not. In fact, we are disproportionately putting white males on death row in Clark County.

**Assemblywoman Miller:**

How many of the death row offenses, or chargeable offenses, are committed by white men or black men as opposed to how many are resulting in those death row convictions?

**Christopher Lalli:**

All of the individuals on death row have committed offenses that are punishable by the death penalty. In an answer to your question, that would be 100 percent of them. What we have done is just put all death row inmates in the state into the chart of the race of current Nevada death row inmates [slide 2]. What we have done in Clark County is to look at the trend. What we are doing in the last 5 years, the last 10 years, is more significant than what we did 20 years ago. If you look at the modern trend, I would submit that, based upon the raw numbers, there is not an instance of focusing on racial minority members.

**Assemblywoman Miller:**

I know we have so much to cover, but I am interested in those raw numbers. It is not an impression of the raw numbers, I am just interested in the raw numbers—crimes versus convictions.

**Christopher Lalli:**

Maybe I am misunderstanding your question, but the raw numbers of individuals in addition to the percentages are actually included on the diagram [slide 4, ([Exhibit H](#))]. Those numbers consist of 11 white individuals, 7 black individuals, 2 Hispanics and 1 Asian. Those are the raw numbers composing the information on this chart.

**Assemblywoman Tolles:**

Mr. Wolfson, in regard to the commission that is addressing these issues, when do you anticipate that the report with those recommendations for reforming the process would be made available?

**Steve Wolfson:**

The commission has been meeting for almost two years. The subcommittees of the commission have been providing reports to the full commission. The subcommittee that is relevant to our discussion is taking action. We have had meetings with the chief justices, the Supreme Court justices, and the judges from the Eighth Judicial District Court to implement some of the things we are talking about. As far as the final and full report, the commission is an ongoing body, so I cannot tell you when a final report will be provided. Unless I am told I cannot, I would be glad to provide you with our subcommittee's report. I am proud of it actually, since I am the chairman of the subcommittee.

**Assemblywoman Tolles:**

I notice on NELIS that there is a lot of information that has been brought forward that has been posted. I think it would be beneficial to this body as well as the public if I could request a follow-up on that commission report, the audits that were referenced, the poll that was referenced, and some of those studies that were referenced in regard to the deterrent factor. Finally, I would like to take a moment of personal privilege to say thank you, particularly to DA Hicks for speaking on behalf of the victims, for recognizing that the criminals had no objection to imposing the death penalty on their victims. I would like to personally thank your office for prosecuting the man who murdered my family member ten years ago. Forgiveness does not mean the absence of consequences.

**Assemblyman Pickard:**

My question is for DA Wolfson, given your extensive experience on both sides of this equation. I am wondering about the unintended—or maybe intended—consequences of this bill. In your view, if life without parole is crueler than death, do you believe that this could lead to more defense actions that will then call into question the constitutionality of life without parole under the Eighth Amendment?

**Steve Wolfson:**

I do not know. So much focus has been on the death penalty, the finality of the death penalty, and whether it is cruel and unusual punishment. I do not think there has been as much focus on the lesser penalty of life without parole. I do not know that death is worse than life without. Juries make decisions based on what should happen to an individual based upon a variety of factors. I cannot predict what the future may have.

**Assemblyman Thompson:**

I want to talk about prevention. Since we are talking about data so much today, share with us what, if anything, your offices are doing to be proactive around prevention and making those data-driven decisions and strategies in your office. There are a lot of hurting families here today and many who are not here today. What are your offices doing for prevention? The reason I say that is because there is data out there that says that 60 percent of the defendants suffer from mental impairment, 44 percent have intellectual disabilities, nearly 1 in 5 are under the age of 21, racial bias is in the application of the death penalty, so on and so forth. How can your offices see this time and again and not address it prevention-wise?

**Steve Wolfson:**

I have been the DA for five years. When I took over, I started participating in the Sheriff's Multi-Cultural Advisory Council. I think it started with Sheriff Gillespie and now carried forward with Sheriff Lombardo. We meet once a month. There are 40 or 50 people representing all cultures in that room to talk about what is happening in Clark County. When we had some problems with civil discourse in other communities—Baltimore and the like—Las Vegas was very concerned about what was going to happen in our community. We started meeting ahead of time to talk about what we can do to prevent civil discord. Sheriff Lombardo gets all the credit. We went into the community, met with community representatives, and heard what they had to say. That is one thing that my office participates

in on a regular basis. I have regular meetings with law enforcement to discuss what we can do to combat violent crime. That is what is now on a lot of people's minds: violent crime. We had 158 homicides in Clark County last year—I do not know if it was the record, but it was very close. Violent crime is up. I do not know what to do about it, but I meet with my colleagues, I meet with the sheriff, and I meet with other representatives to discuss getting out into the community. These are social issues, and I cannot answer that question in two minutes.

**Assemblyman Thompson:**

With all due respect, I hear that you are hearing it and you are talking about it. What are programs that your office, not the sheriff, is doing to combat this? You have profiles of the behaviors of the types of people who are coming in. What is your office doing, not hearing, about it? We all heard today and we hear it all the time: what are we doing, we have to do something about it, we do not want families to be hurting like my colleague and others have shared and will share.

**Steve Wolfson:**

I have specialty teams in my office. Clark County is a big community. We are the thirteenth largest county in the country. Unlike 20 years ago when we did not have specialized prosecutors, we do now. I have a gang team consisting of four lawyers who target gang violence. I have a gun team with five lawyers who target gun crime. That is what people are most worried about. I am seeking a third grand jury in Clark County so that we can effectively and efficiently prosecute dangerous people. That is one thing I am doing and I am working very hard at it because I think it will have an impact and effect to protect the citizens of Clark County.

**Chairman Yeager:**

Not to cut you off, but we really have to move on. I will ask you and any other members of the Committee to take those questions offline. For members of the public, here is what we are going to do: we do not have much time and many of you have come here to provide your testimony. The voters do not always make it easy on us here in the Legislature. We have 120 days to get through all of our business. I would first like to invite anyone who would like to give testimony to present it in writing. I do want you to come to the table and at least state your name on the record, your affiliation, and your position on this bill. We do not have time for additional testimony beyond that. Again, I would invite you to submit your written testimony to the Committee. I can assure you that we will read those. Let us start in Carson City, in opposition.

**Ronald P. Dreher, Government Affairs Director, Peace Officers Research Association of Nevada:**

We are in opposition to A.B. 237. Three of the 83 people on death row are people who I had an input in putting there. I am a retired homicide detective from Reno. There is a lot more to this story that I would be more than happy to share.

**Terri Bryson, Chapter Co-Leader, Desert of Hope Chapter, National Organization of Parents of Murdered Children, Inc.**

[Additional testimony submitted ([Exhibit I](#)).] I am against this bill. I am a mother of a daughter who was murdered. Her name is Cherish Noelle. She was 22; twenty-three years and two weeks into her death. I am also the chapter co-leader of Parents of Murdered Children in Las Vegas, Nevada. Being against this bill is something that I have always felt throughout my life, but now that it has affected me, I want to be able to share that this affects more than just the statistics and the numbers that we are talking about today. There is another side to what we are dealing with here today—that is the victims and the families that are affected—we are convicted for life. We have to live with the ramifications of somebody else's choices against our children. That entire branch of my family tree has been eradicated. I do not have an option. I do not have the privilege of her living out the rest of her life as some of these people who are sitting on death row. I had to pull my surviving daughter off of her dead sister's body. I had to hear the wails of her father still echoing in my mind. I have had to pick my husband off the ground more than once. I, as a chapter leader, hear tales every day. I get the first calls about people who have been affected by this violence. My worst call is saying I need you to talk to a mother who lost her 3-year-old child. If they are calling me it is not an accident; it is not due to illness. I need to have our voices heard. I am coming to you to raise our voice and let you know that there is another side to the statistics. There is something more than the monetary loss and gain. Please hear our cries from the valley of grief. Listen to what we have to say too.

**Chairman Yeager:**

Thank you for your testimony, ma'am. Feel free to submit your additional testimony in writing if you would like to as well. You can give those to our committee secretary.

**Shalonda Hughes, Private Citizen, Las Vegas, Nevada:**

I made Kenneth Allen Hardwick a homemade caramel apple pie and kissed him goodbye and I never saw him again until I had to identify his body. He was a son, a brother, an uncle, and a father of four. He was my best friend; he was my fiancé, soon to be my husband. He was going to be the father of my children. I was 30 years old and he was the love of my life. One night, two men did not care what was going on in anyone's world but their own: no regard for kin, his family, friends, loved ones, not me, not you, not anyone. The fact of my case is they took his life for what they thought was money. They followed him. He had a traveling humidor. They killed him over cigars. He lost his life because these criminals were lazy and greedy and it was easy for them. All they got out of it was cigars. This premeditated murder occurred December 5, 2006. It took almost six months before their arrest. I showed up for court every single day. Two preliminary hearings, 24 calendar calls within 32 months, and it finally went to trial March 2010. Our lives were turned upside down. I lived in fear, complete paranoia, wondering if we would ever receive justice. We finally did in April 2010. The criminals convicted of first-degree murder were sentenced to death for the heinous crime they committed. We felt relief 40 months later. We have survived long enough to see another day that our government has enforced rules to protect our lives. Without these rules, our world would be in a chaotic state of nature. Rules and regulations are very important to keeping order within our society.

Yes, the death penalty is the most severe form of punishment sentenced to a person who has been condemned by the law. It is important to me and Ken's family, and all of the innocent victims. It could be you. It is important that we provide retribution to the people who have been victimized in the most atrocious manner. We cannot survive in a society that fails to punish criminals in a way thought to be proportionate to the severity of their crime. If the result of doing something is too extreme, we hope that people will change their behavior. The death penalty provides a justified method of deterrence. It could prevent you from ever having to experience my pain. The death penalty helps us think twice about carrying out intentions of belligerent behavior, and it deters people from committing repulsive acts of crime. The death penalty serves as a reminder that there are severe consequences to our actions.

In conclusion, I want to say that after listening to what everyone was saying on both sides, certainly we need to examine the process and figure out how we fix it. I understand cost is an issue, but I am offended that those people put a value on Ken's life. I am offended. I am not angry; I do not hate; I just want justice. I strongly oppose this bill.

**Tereza Trejbalova, Private Citizen, Las Vegas, Nevada:**

I am a student of criminal justice and my research area is the death penalty.

**Chairman Yeager:**

May I ask if you are in opposition or support?

**Tereza Trejbalova:**

In support.

**Chairman Yeager:**

Can I ask you to hold off for just a moment? We are still taking opposition testimony.

**Kenneth Cherry, Sr., Private Citizen, Oakland, California:**

My son was murdered February 21, 2013, on the Las Vegas Strip. He lost his life, and two other people lost their lives too. The way that the murders happened was the two other people burned up in a car. The guy who did it, the animal who did it, escaped and went to Los Angeles. I am sure many of you are familiar with it. Some of the things I have discovered that he said: he was not tripping off the fact that he killed, he murdered, these people—he was trying to get away. The death penalty is definitely needed for people like that. He is not crazy; he is just evil. An example I thought of while I was coming up here is that if we could prosecute the devil and convict him and then he would be sentenced to death, we would kill him. That is one of his protégés.

**Chairman Yeager:**

I understand your point, but in the interest of time, I need you to keep your comments to this bill.



**Kenneth Cherry, Sr.:**

I am finished. That is all I want to say. I am opposed to the bill—I came all the way from Oakland, California. I drove all night.

**Jennifer Otremba, Private Citizen, Las Vegas, Nevada:**

[Read from prepared testimony ([Exhibit J](#)).] This is my daughter Alyssa. This picture was taken 48 hours before she was brutally murdered. She was 15 years old and a sophomore in high school. On September 2, 2011, she was walking home from borrowing a textbook from a friend. It was 6:38 when she texted me saying she was walking home and her phone was going to die, but she would be home within a half hour. Exactly 30 minutes later I texted her and there was no response. I called her and there was no answer. I searched for her. I called the police and they were looking for her. It was 24 hours later when her body was found about 300 feet behind our home in the vacant lot. As the details unfolded, I learned that Alyssa was within feet of the pedestrian gate at the end of our street when she was attacked by 19-year-old Javier Righetti. He left his home with a knife because he was bored. He spotted her walking. He proceeded to follow her for a couple of blocks before he attacked her. He drug her into the lot. He sexually assaulted her. He raped her. He tortured her, stabbing her more than 80 times in the head, neck, and body. He carved an "LV" into her thigh because it made him feel "gangster." When you think it cannot get any worse, he came back hours later, he poured gasoline on her, and he burned her body. The coroner had to use dental records to identify her mutilated body. During the autopsy, they found the tip of the knife in her skull. Her remains were too much for us to see; we were told not to see them. There are no words that could adequately describe what this has done to my family. It has been five and a half years. It has been a nightmare. In the midst of all of this we have continued to seek justice. Eight days ago, the man who killed her was sentenced to death. Eight days ago, we finally received justice for her life. It was less than 24 hours later that I got a phone call that there was a bill that was wanting to abolish this. Nothing will bring her back, but there are some people who commit such heinous crimes that they deserve to live on death row and not know when their last days will be coming. I will submit the rest of my testimony.

**Chairman Yeager:**

Thank you for being here. Please do submit the rest of your testimony.

**Lisa Postorino, Private Citizen, Las Vegas, Nevada:**

[Additional testimony submitted ([Exhibit K](#)).] I am here on behalf of my niece, Alexis Postorino, who was murdered in 2010 by Norman Belcher. Belcher had killed someone prior, just gotten out of prison, and four months later, he killed my niece. I could go on about Alexis, but she was a great kid and very positive. I want you all to understand that if you put somebody in prison for life without parole, it is just another way of life for them; they learn to adapt to that lifestyle. They still have a life, they still go on, and they still interact with others. It is not a punishment. Where is the punishment? A heinous crime is a heinous crime; that is why we had to wait six years to go to trial. That is why we patiently waited through the appeal process. We did everything, and then he gets life without parole? He was just sentenced three months ago, after six years. I waited six years, and he is going to

get a different lifestyle? He cannot see women. What else is the consequence if we just put him without parole? There is no consequence. There has to be punishment. One Assemblywoman said there has to be consequences for actions. I am a Christian; I am not angry, and I forgive everyone, but there has to be punishment for crime or we are going to have more crime.

**Brett Kandt, Chief Deputy Attorney General, Office of the Attorney General:**

Our office is in strong opposition to this bill, and I will submit written testimony ([Exhibit L](#)).

**Tehran Boldon, Private Citizen, Las Vegas, Nevada:**

I am opposed to this bill. Steve Wolfson and the Las Vegas DA's Office are the finest in the country. The only dog-and-pony show is the one that brings this bill up when my family wants justice.

**Chairman Yeager:**

Sir, I need you to be respectful to the legislative process. We have not taken any action on this bill; we are simply taking testimony. If you want to make comments on the bill and your position, that is appropriate. We will not stand personal insults to the Committee; we are simply doing the business we were elected to do.

**Tehran Boldon:**

It does not matter what race the person is who took my brother's life. The jury spoke. They sentenced Ammar Harris, the most worst of the worst of the worst. That is who he is. It is a deterrent. If a police officer is murdered, ambushed by a convict in Henderson, are you going to put a price on that for the family, the taxpayers? There are 82 people on death row. I will pay for one of those and you can take those off the books if price is your concern. What price do you have to put on my brother's life? How dare you try to take away the justice that is granted by the Supreme Court and take my family and these families through this burden. A waste in taxpayer's money is trying to save someone who is the lowest of the low, who has no respect or remorse. I think it is a slap in the face of my family and everybody who has someone on death row. You cannot put a price on the lives lost, my mother's life shortened. My life will be shortened because of this. I cannot function well because of this. But you have the ACLU and all these organizations that spend millions of dollars . . .

**Chairman Yeager:**

Sir, I need you to be respectful to the process. I take it you are opposed to the bill. I think we have noted that. If you would like to submit additional testimony for the Committee to consider, I would invite you to do that in writing to our committee secretary.

**Tehran Boldon:**

One more thing I would like to say. I know that when the death penalty is on the table, not too many people who face it want the death penalty. It is a deterrent. It is definitely

a deterrent if someone knows they kill a cop and they will face the death penalty. It is only effective if you use it. It has been 40 years. If you do not use it, how can you qualify whether it is effective or not if nobody has been killed or executed? How can you say it is not a deterrent? Do you get that point?

**Chairman Yeager:**

I do sir, but this is not the time for witnesses to ask questions. It is time to provide testimony, so I do thank you for your comments and would again invite you to present any additional testimony to the committee secretary.

[Additional testimony in opposition to Assembly Bill 237 was submitted ([Exhibit M](#)).]

For now, we are going to come back up to Carson City. I know there were a few others in support. I want to reopen it for support. We are just looking for name, organization, and that you support the bill.

**Tereza Trejbalova:**

I want to quickly address the deterrence, and I have submitted testimony ([Exhibit N](#)) that shows that for the three last states that have abolished the death penalty, Maryland, Connecticut, and Illinois, the murder rates went down since they abolished the death penalty while Nevada is still going up.

**Escenthio Marigny, Jr., Student and Climate Justice Organizer, Progressive Leadership Alliance of Nevada:**

We are in support of this bill. This is an extremely hard topic. My heart goes out to all of the families who have been impacted by murder personally. As an organization, Progressive Leadership Alliance of Nevada (PLAN) is in support of this bill. It is a major racial and social justice issue and something that we need to take a lot of time to look at.

**Wendy Stolyarov, Legislative Director, Libertarian Party of Nevada:**

We strongly support this bill. We agree with PLAN—it is a social justice issue and we would like to see this bill passed. [Additional testimony submitted ([Exhibit O](#)).]

**Donald G.T. Gallimore, Second Vice President, Reno/Sparks Branch, National Association for the Advancement of Colored People:**

We in the tristate National Association for the Advancement of Colored People (NAACP) do support this bill. There are a lot of people who are affected by it. I know I am—I have a death row relative. I know how that can affect a family. The forgiveness part of it is a key. If you can forgive, life in prison means that they will not be coming out.

**Sarah Collins, representing Nevada Psychological Association:**

We are in support.

**Tamika Shauntee, representing Las Vegas Branch, National Association for the Advancement of Colored People:**

We would like to show our support for A.B. 237. Most of the testimony in support of this bill is in line with the NAACP's stance on the death penalty. Blacks and African Americans are disproportionately sentenced to death at a higher rate.

[All items submitted but not discussed will become part of the record: ([Exhibit P](#)), ([Exhibit Q](#)), and ([Exhibit R](#)).]

**Chairman Yeager:**

Is there anyone who would like to testify in the neutral position? [There was no one.] I suspected we did not, and those suspicions are confirmed. Assemblyman Ohrenschall, I would invite you to the table at this time to make any concluding remarks. Please remember that we are in a time crunch.

**Assemblyman Ohrenschall:**

This is a very difficult issue for us all. I appreciate the Committee's time hearing us out. If I could bring justice to the victim's families who were here today, I would. The reality is, notwithstanding what DA Wolfson said, I am not optimistic that we are going to get that chemical cocktail anytime soon. If you look at the statements given by the drug companies ([Exhibit C](#)), that further leads me to not be optimistic. Regarding the cost study that was performed by the legislative audit, if anything, due to the minimal participation from some of the prosecutorial offices in the state, the cost of prosecuting a death penalty case versus a life without parole case is underrepresented, not overrepresented. Those are real savings. Those savings could be spent on crime prevention or enforcement, trying to prevent other violent crimes in our state.

The poll that was cited by District Attorney Wolfson was on *The Nevada Independent* website. While I am not familiar with who they called or what percentage were cell phones versus landlines or ages of the people polled, I am aware that that is a political election pollster. This is a policy issue. If we were going to look at polls, I would hope that we look at peer-reviewed studies that actually look at who they call. As I understand it, when polls are conducted where the cost of the death penalty and the lack of availability of the chemicals are factored into the question versus just a straight up or down poll, the results are closer to 50 percent for and against. As in my answer to Assemblyman Pickard's question, we are a representative democracy—a republican form of government—we do not govern by poll. Our constituents sent us here to look at the common sense issues and to make these decisions.

Regarding the argument that life without the possibility of parole would become the new death penalty or become as costly: There was a question to DA Wolfson as to whether there would be Eighth Amendment challenges. Eighteen jurisdictions in our country have life without the possibility of parole now as their maximum penalty. I am not aware of any challenges going through the federal court saying that this is cruel and unusual punishment.

As to any unintended consequences of the bill: there was a point made by Mr. Lalli as to requiring two attorneys in certain life without the possibility of parole cases. That is inadvertent, and I would accept any friendly amendment to remedy that if the Committee is willing to consider processing this measure.

**Assemblyman Hansen:**

I would object that those two would be given another opportunity to come to the table. If we are short on time, I do not think it is fair to have them come back for a second shot.

**Nancy E. Hart:**

I would like to say something on behalf of Ms. Portaro if I may. She would like to clarify that she believes that the perpetrator of her son's killing did receive serious consequences for the murder.

**Chairman Yeager:**

I am going to close the hearing on Assembly Bill 237. I want to thank everyone in the audience for your patience. Please do submit any comments in writing that you were unable to submit here today. At this time, I will open the meeting for public comment. [There was none.]

The meeting is adjourned [at 11:46 a.m.].

RESPECTFULLY SUBMITTED:

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Erin McHam  
Committee Secretary

APPROVED BY:

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Assemblyman Steve Yeager, Chairman

DATE: \_\_\_\_\_

## EXHIBITS

[Exhibit A](#) is the Agenda.

[Exhibit B](#) is the Attendance Roster.

[Exhibit C](#) is a document dated March 2017 titled "Company Statements Opposing the Misuse of Medicines in Executions," presented by Assemblyman James Ohrenschall, Assembly District 12, in support of Assembly Bill 237.

[Exhibit D](#) is a document titled "The Death Penalty in Nevada Since 1977," dated March 21, 2017, submitted by Nancy E. Hart, President, Nevada Coalition Against the Death Penalty, and presented by Michael Pescetta, private citizen, Las Vegas, in support of Assembly Bill 237.

[Exhibit E](#) is a document dated March 20, 2017, titled "Death Penalty Information Center: Facts About the Death Penalty," submitted by Nancy E. Hart, President, Nevada Coalition Against the Death Penalty and presented by Michael Pescetta, private citizen, Las Vegas, in support of Assembly Bill 237.

[Exhibit F](#) is a copy of a resolution supporting repeal of the death penalty adopted by the National Black Caucus of State Legislators, presented by Assemblywoman Dina Neal, Assembly District 7, in support of Assembly Bill 237.

[Exhibit G](#) is a document titled "Death Row Since 1977 Chronological," dated March 21, 2017, submitted by Nancy E. Hart, President, Nevada Coalition Against the Death Penalty, in support of Assembly Bill 237.

[Exhibit H](#) is a copy of a PowerPoint presentation titled "Death Penalty Statistics," presented by Christopher J. Lalli, Assistant District Attorney, Clark County District Attorney's Office, in opposition to Assembly Bill 237.

[Exhibit I](#) is written testimony authored and submitted by Terri Bryson, Chapter Co-Leader, Desert of Hope Chapter, National Organization of Parents of Murdered Children, Inc., dated March 29, 2017, in opposition to Assembly Bill 237.

[Exhibit J](#) is written testimony in opposition to Assembly Bill 237 presented by Jennifer Otremba, private citizen, Las Vegas.

[Exhibit K](#) is written testimony submitted by Lisa Postorino, private citizen, Las Vegas, dated March 29, 2017, in opposition to Assembly Bill 237.

[Exhibit L](#) is a letter dated March 31, 2017, to Chairman Yeager and members of the Assembly Committee on Judiciary expressing opposition to Assembly Bill 237, submitted by Brett Kandt, Chief Deputy Attorney General, Office of the Attorney General.

[Exhibit M](#) is a collection of letters submitted in opposition to Assembly Bill 237 consisting of the following:

1. A document titled "Arguments Against A.B. 237, Ending Capital Punishment," submitted by Janine Hansen, State President, Nevada Families for Freedom, and representing Nevada Eagle Forum.
2. A letter to Chairman Yeager and members of the Assembly Committee on Judiciary, dated March 29, 2017, from Doug Nulle, private citizen, Las Vegas.

[Exhibit N](#) is material in support of Assembly Bill 237, submitted by Tereza Trejbalova, private citizen, Las Vegas, consisting of the following:

1. A letter dated March 28, 2017, to Chairman Yeager and the Assembly Committee on Judiciary authored by Tereza Trejbalova, private citizen, Las Vegas, expressing support for Assembly Bill 237.
2. A document titled "Murder and Non-negligent Manslaughter Rates Comparisons."
3. A document titled "Cost Comparisons of Capital versus Non-Capital Cases."

[Exhibit O](#) is written testimony authored and submitted by Wendy Stolyarov, Legislative Director, Libertarian Party of Nevada, in support of Assembly Bill 237.

[Exhibit P](#) is a copy of a resolution adopted by the National Hispanic Caucus of State Legislators in support of Assembly Bill 237.

[Exhibit Q](#) is a collection of letters in support of Assembly Bill 237 consisting of the following:

1. A letter to Chairman Yeager and members the Assembly Committee on Judiciary dated March 6, 2017, from Chris Giunchigliani, Vice Chair, Clark County Board of County Commissioners.
2. A letter to Chairman Yeager dated March 17, 2017, from Zuzana Trojanova.
3. A letter to Chairman Yeager dated March 27, 2017, from Breanna Boppre, doctoral student in criminology and criminal justice.
4. A letter to Chairman Yeager dated March 27, 2017, from Bridget Kelly.
5. A letter to Chairman Yeager dated March 28, 2017, from Emily J. Salisbury, Ph.D., Associate Professor, University of Nevada, Las Vegas, and Editor, Criminal Justice and Behavior.
6. A letter to Chairman Yeager, dated March 27, 2017, from Miliaikeala S. J. Heen.
7. A letter to Assemblyman Ohrenschall, dated March 28, 2017, from Lisa Rea, President, Restorative Justice International.
8. A copy of an email dated March 28, 2017, from The Reverend Jeffrey Paul, St. Peter's Episcopal Church, to the Assembly Committee on Judiciary.
9. A letter to Chairman Yeager dated March 28, 2017, from Desiree Strohmeier.
10. A copy of an email dated March 29, 2017, from Reverend Sandy Johnson, Boulder City United Methodist Church, to Chairman Yeager and members of the Assembly Committee on Judiciary.

[Exhibit R](#) is material provided by Randolph M. Fiedler, Nevada Attorneys for Criminal Justice, in support of Assembly Bill 237 consisting of the following:

1. A letter dated March 27, 2017, from Randolph M. Fiedler, Nevada Attorneys for Criminal Justice, to the Assembly Committee on Judiciary expressing support for Assembly Bill 237.
2. National Research Council, *Deterrence and the Death Penalty* (2012), Committee on Deterrence and the Death Penalty, Daniel S. Nagin and John V. Pepper, Editors. Committee on Law and Justice, Division of Behavioral and Social Sciences and Education. Washington, D.C.: The National Academies Press.
3. Daniel S. Nagin, *Deterrence in the Twenty-First Century*, 42 Crime & Just. 199 (2013).
4. Marilyn Peterson Armour and Mark S. Umbreit, *Assessing the Impact of the Ultimate Penal Sanction on Homicide Survivors: A Two State Comparison*, 96 Marq. L. Rev. 1 (Fall 2012).
5. Richard C. Dieter, Death Penalty Information Center, *Battle Scars: Military Veterans and the Death Penalty*, Day (2015).
6. Justin D. Levinson, Robert J. Smith, and Danielle M. Young, *Devaluing Death: An Empirical Study of Implicit Racial Bias on Jury Eligible Citizens in Six Death Penalty States*, 89 N.Y.U. L. Rev. 513 (May 2014).