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TESTIMONY OF DAVID WARD TO THE SENATE JUDICIARY COMMITTEE
ON AB 15. April, 24, 2003

GOOD MORNING. FOR THE RECORD I'M DAVID WARD, I SERVE AS CHAIR OF NEVADA'S COMMISSION ON MENTAL HEALTH AND DEVELOPMENTAL SERVICES. I'M ALSO THE FATHER OF RYAN WARD, MY 20 YEAR OLD SON WHO HAS A SEIZURE DISORDER, MILD CEREBRAL PALSY AND SEVERE MENTAL RETARDATION. I'M TESTIFYING TODAY TO HELP PROVIDE THIS COMMITTEE WITH SOME ADDITIONAL INSIGHTS TO SOME OF THE IDIOSYNCRASIES OF PEOPLE WITH DEVELOPMENTAL DISABILITIES.

IN FACT, RYAN'S DISABILITIES ARE GREATER THAN THOSE WHO WOULD BE DIRECTLY AFFECTED BY THE LEGISLATION YOU'RE CONSIDERING, BUT HIS CHARACTERISTICS AND BEHAVIORS ARE COMMON AMONG MANY PEOPLE WITH EVEN MILD MENTAL DISABILITIES.

I'M VERY FOND OF SAYING THAT MY SON RYAN IS MENTALLY RETARDED, AND SOCIALLY GIFTED. IMAGINE GOING THROUGH LIFE WITH AN UNWAVERING LOVE FOR EVERYONE YOU MEET, AND COUPLE THAT WITH THE BELIEF THAT YOUR AFFECTION IS ALWAYS RECIPROCATED. RYAN IS LIKE THAT. HIS MOST COMMON WORDS ARE "I LOVE YOU," AND ONE LOOK AT HIS EXPRESSION CONVINCES YOU HE IS COMPLETELY SINCERE. BECAUSE OF HIS AFFECTION FOR, AND HIS INHERENT TRUST IN PEOPLE, RYAN IS VERY EASILY MANIPULATED. GIVEN THE SEVERITY OF HIS CONDITION, HIS MOTHER AND I TAKE GREAT PRECAUTIONS TO SEE THAT RYAN IS NOT PUT INTO SITUATIONS WHERE HE CAN BE MANIPULATED OR ABUSED IN ANYWAY.

HOWEVER, THOSE LESS IMPACTED THAN RYAN FREQUENTLY DO NOT ENJOY THAT SAME LEVEL OF PROTECTION. THEY CAN BE, AND OFTEN ARE, DIRECTED BY THOSE WHOSE MOTIVES ARE LESS THAN HONORABLE. I SAW THAT OCCUR WITH MY OWN FATHER DURING THE YEARS HE STRUGGLED WITH ALZHEIMER'S DISEASE. IT IS UNCONSCIONABLE, BUT NOT UNCOMMON FOR THOSE WITH MENTAL CHALLENGES TO FALL VICTIM TO UNETHICAL PREDATORS.

IF WE CAN ALL AGREE THAT CAPITAL PUNISHMENT SHOULD BE RESERVED FOR THE MOST REPREHENSIBLE OF CRIMES, WE SHOULD ALSO AGREE THAT THE ULTIMATE PUNISHMENT SHOULD BE EXCLUSIVELY APPLIED TO THOSE MOST CULPABLE IN THOSE CRIMES. PEOPLE WITH DEVELOPMENTAL DISABILITIES SHOULD BE HELD ACCOUNTABLE FOR THEIR ACTIONS IN EXACTLY THE SAME WAY WE HOLD CHILDREN ACCOUNTABLE... IN DIRECT PROPORTION TO THEIR ABILITY TO FULLY COMPREHEND AND CONTROL THEIR OWN ACTIONS. FOR THOSE PEOPLE WITH DEVELOPMENTAL DISABILITIES, THAT ABILITY FOR COMPREHENSION AND FULL CONTROL IS, BY DEFINITION, SIGNIFICANTLY LIMITED, AND SO IT FOLLOWS THAT THEIR PUNISHMENT REQUIRES LIMITATIONS AS WELL. AS A RESULT, I STRONGLY URGE YOU TO APPLY REASON AND COMPASSION TO THIS ISSUE. I URGE YOU TO COMPLETELY BAN THE EXECUTION OF PERSONS WITH DEVELOPMENTAL DISABILITIES WITHIN THE STATE OF NEVADA. THANKS FOR YOUR TIME AND FOR YOUR CAREFUL CONSIDERATION OF THIS ISSUE.

Testimony of Brian Lahren, Ph.D.

Former Executive Director

The Washoe Arc

April 24, 2003

Judiciary committee to review legislation on the Death Penalty

Elimination of the death penalty for persons with significant mental retardation:

Those of us who work with persons with mental retardation, and the family members of these individuals, are fully aware of the limitations they have in understanding societal expectations and the consequences of their actions. Unfortunately, this sensitivity is not currently embedded in an official recognition of this aspect of mental disability by Nevada's criminal statutes. No one who has a level of retardation that would qualify them for services in this state should be considered to meet the minimum standards for culpability, participation in their own defense or a sufficiently coherent sense of cause and effect that society requires when it finds an individual's actions warrant the death penalty.

Mental Retardation Compromises Legal Defense: People with mental retardation have a permanent disability that impairs their understanding of almost everything. They do not comprehend the world in the ways we expect of people whom we hold fully responsible for their actions. They typically cannot fathom the complexities of life that surround them; instead they form simple, limited notions of what is expected of them. To make sense out of a complex world they generally deal with what is immediately present and what is, to them, the key feature of the demands placed on them. For example, they often form the simple understanding that their main social task is to please those around them. They will try their best to please parents, teachers and friends (whether they are "good" people or "bad"). They may try to please both defense attorneys and prosecuting attorneys with equal enthusiasm. A heartbreaking example of this is the sadly common experience of "confessing" to a crime to please the people in a law enforcement setting. They simply think this act will allow them to please their jailers so they can be more quickly released from a stressful situation and go home. This tendency is precisely what was so publicly recounted recently in Virginia where a person with mental retardation was on death row for "confessing" to a crime from which he was ultimately exonerated by DNA evidence. No one who spends time with the mentally retarded was in the least surprised by this apparently startling "discovery." It also follows that people with mental retardation are followers, not leaders of other's actions.

People With Mental Retardation "Mask" Their Disability When Possible: One significant aspect of mental retardation is this: not even people with mental retardation want to be seen as having it. People with mental retardation will do everything possible to not be seen as mentally retarded by the people around them.

This is true of these people whether they are in the community, or in the community of inmates in prison. When they speak, they often show they have learned a relatively small collection of acceptable conversational gambits that they use in many different situations. In brief encounters this can wrongly suggest to juries and judges that they are of nearly normal intelligence. These same gambits, with repetition across time and situations, reveal the limitations of the individual. The repetition over time of a limited repertoire more clearly reveals the truth of the situation. Thus, limited observation and common sense judgments can be misleading to casual observers trying to assess the real intellectual status of persons with mental retardation. Virtually every person with mental retardation exerts maximum effort to look normal and thus masks their disability to whatever extent is within their capacity. Juries thus are often in a disadvantaged position to directly observe these mitigating limitations of thought in the behavior of a mentally retarded defendant. Professional judgment is a necessary requirement for assessing competence related to mental retardation. Nothing else will do.

Determining Mental Retardation: It is not difficult for professionals to determine who is mentally retarded and who is not. One may be able to fake a low score in a single I.Q. test, but no person with mental retardation can fake a higher IQ than they actually have. The case of downward faking is easy to ferret out since anyone with an IQ lower than 70 will have a record of special education services and accompanying poor academic performance that is easy to document. Remember, are talking about exempting from the death penalty only those individuals with significantly sub-average intelligence.

The reliability of this sort of a disability determination is vouched for by the fact that the federal government and the State of Nevada depend on it in determining who is eligible for life-long taxpayer support. This standard has been used in Nevada, without question, since 1969 by the Division of Mental Health and Developmental Services.

Since even in Nevada, with the worst record of support for human services in the nation, this level of disability is recognized as defining serious impairment, it likewise makes sense that these individuals do not meet the legal standards for culpability that apply to people of normal intelligence.

On behalf of the Washoe Association for Retarded Citizens and its many sister human-services agencies and members, I ask you to recommend elimination of the death penalty for this special population. This is the right thing to do in light of this significant, life-long, judgment-impairing mental disability. No public good is affirmed by the execution of persons with significant mental retardation. The vast majority of the world's nations have already stopped doing it. Only three still do it: the U.S., Japan and Kyrgystan.

In four recent national surveys, a full 70+% of Americans believed that persons with significant mental retardation should not be executed. A decision for amending Nevada practice in this regard is not a risky political decision, it is simply a humane and well informed act.

Sincerely,

Brian Lahren, Ph.D.
Former Executive Director
The Washoe Arc