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SENATE JUDICIARY COMMITTEE HEARING  
AB 118 -- JUVENILE DEATH PENALTY  
APRIL 25, 2003

TESTIMONY OF MARY BERKHEISER  
PROFESSOR OF LAW AND  
CO-DIRECTOR, JUVENILE JUSTICE CLINIC  
WILLIAM S. BOYD SCHOOL OF LAW  
UNIVERSITY OF NEVADA LAS VEGAS

GOOD MORNING, CHAIR AMODEI AND OTHER DISTINGUISHED COMMITTEE MEMBERS. MY NAME IS MARY BERKHEISER. I AM A PROFESSOR OF LAW AT UNLV'S WILLIAM S. BOYD SCHOOL OF LAW, WHERE I ALSO AM CO-DIRECTOR OF THE JUVENILE JUSTICE CLINIC. I DEVOTE MY RESEARCH AND WRITING TO ISSUES OF JUVENILE JUSTICE. I'M PLEASED TO BE HERE TODAY TO TESTIFY IN SUPPORT OF AB 118.

I HAVE LISTENED WITH GREAT INTEREST TO THE PRIOR TESTIMONY. MY REMARKS ARE LIMITED TO JUST A FEW POINTS NOT YET MADE BY OTHERS HERE TODAY.

FIRST, I WANT TO SPEAK ABOUT A SOCIO-PSYCHOLOGICAL PHENOMENON OF ADOLESCENCE. WE ALL KNOW FROM OUR OWN EXPERIENCES IN OUR YOUTH AND FROM OUR CHILDREN AND, PERHAPS GRANDCHILDREN, THAT KIDS LIKE TO HANG OUT WITH EACH OTHER. THAT'S ONE THING THAT HASN'T CHANGED SINCE WE WERE YOUNG. IT SEEMS TO BE AN IMMUTABLE CHARACTERISTIC OF CHILDHOOD AND YOUTH.

THIS DRIVE TO BE A PART OF A GROUP OR AT LEAST TO HAVE SOMEONE, IF JUST ONE PERSON, TO HANG WITH, IS A BIG FACT OF LIFE DURING OUR TEENAGE YEARS. THUS, IT IS NOT SURPRISING TO LEARN THAT THE MAJORITY OF ADOLESCENT CRIME -- ABOUT TWO THIRDS -- IS COMMITTED BY GROUPS, OR AT LEAST, PAIRS, OF YOUNG PEOPLE, AND THAT INCLUDES CAPITAL

MURDER.

THE REVERSE IS TRUE FOR ADULTS. ADULTS COMMIT CRIMES WITH OTHERS ONLY ONE- IN FIVE TIMES - 20%, COMPARED TO THE NEARLY 70% OF ADOLESCENTS. AND THESE NUMBERS HOLD TRUE FOR THE JUVENILE OFFENDERS ON DEATH ROW.

- ▶ BY MY COUNT, THERE ARE AT PRESENT 79 JUVENILE OFFENDERS ON DEATH ROW.
- ▶ AMONG THOSE, 55 (OR TWO-THIRDS) WERE CONVICTED OF CRIMES INVOLVING MULTIPLE OFFENDERS.
- ▶ EVEN AMONG THE 24 WHO ACTED ALONE, THE CIRCUMSTANCES SURROUNDING THE COMMISSION OF THE CRIMES FOR WHICH THEY WERE CONVICTED INDICATE THAT THE CRIME WAS INSTIGATED, OR THE TEEN OFFENDER WAS EGGED ON, BY HIS FRIENDS OR BROTHERS, HIS FATHER OR FATHER-FIGURE .

MY SECOND POINT IS THAT IN THIS RESPECT AND CERTAIN OTHERS, ADOLESCENTS RESEMBLE MENTALLY RETARDED INDIVIDUALS. THEY SO MUCH WANT TO PLEASE THOSE THEY LOOK UP TO. THEY OFTEN LACK CONFIDENCE IN THEMSELVES, AND ARE NOT VERY SAVVY. THEY WANT SO MUCH TO LOOK LIKE "BIG MEN." THEY ARE EASY PREY FOR OLDER, MORE SAVVY AND MORE CAPABLE OFFENDERS. THEY CAN BE EASILY BAITED AND ENTICED INTO CRIMINAL ACTS. THEY WOULD NEVER COMMIT ON THEIR OWN.

THE WORK OF PSYCHOLOGIST MARTY BEYER IS PARTICULARLY ENLIGHTENING. DR. BEYER COMPREHENSIVELY ASSESSED 17 TEENS WHO HAD COMMITTED SERIOUS FELONY OFFENSES - NINE HOMICIDES AND EIGHT OTHER CRIMES OF VIOLENCE. I'VE PROVIDED A COPY OF HER ARTICLE REPORTING ON THAT WORK FOR THE RECORD. HERE ARE SOME OF HER CONCLUSIONS:

H- 2

- ▶ IMMATURITY WAS A SIGNIFICANT FACTOR IN THE OFFENSES OF ALL 17 YOUNG PEOPLE.
- ▶ THE MAJORITY DID NOT HAVE ADULT INTENT.
- ▶ BECAUSE OF IMMATURE THINKING AND UNFORMED IDENTITIES, THEY FOLLOWED OTHERS OR WERE COERCED INTO SITUATIONS THAT GOT QUICKLY OUT OF CONTROL IN WAYS THEY DID NOT ANTICIPATE.
- ▶ IMMATURITY MADE IT IMPOSSIBLE FOR MORE THAN HALF TO ASSIST IN THEIR OWN DEFENSE.
- ▶ MOST COULD NOT ACCURATELY ENVISION THE FUTURE -- LIFE OR DEATH.

YET, HALF OF THESE YOUNG PEOPLE FACED THE DEATH PENALTY.

THIRD, I'D LIKE TO SPEAK TO A POPULAR MISCONCEPTION ABOUT JUVENILES WHO ARE TRIED AS ADULTS (WHICH THEY MUST BE IN ORDER TO BE SENTENCED TO DEATH). I WAS UNDER THE IMPRESSION, UNTIL I LEARNED DIFFERENTLY, THAT THE JUVENILE COURT IN EACH CASE WOULD MAKE A DETERMINATION AS TO THE MATURITY LEVEL, CULPABILITY, AND AMENABILITY TO TREATMENT WITHIN THE JUVENILE JUSTICE SYSTEM OF EACH JUVENILE WHO IS THE SUBJECT OF CERTIFICATION PROCEEDINGS. IN FACT, HOWEVER, THOSE DETERMINATIONS ARE NOT MADE. INSTEAD, IT APPEARS THAT THE SOLE FACTOR IS THE CRIME WITH WHICH THE YOUTH IS CHARGED.

- ▶ IT DOES NOT MATTER THAT IT IS THE YOUTH'S FIRST DELINQUENCY PETITION.

H- 3

- ▶ IT DOES NOT MATTER THAT THE YOUTH IS ILLITERATE AND HAS THE MIND OF A 7 OR 8 YEAR OLD.
- ▶ IT DOES NOT MATTER THAT NO ONE WAS THE VICTIM OF THE ALLEGED CRIME.
- ▶ WHAT MATTERS IS THE CRIME, AND THAT'S WHAT LANDS A YOUNG PERSON IN ADULT COURT.

MY FOURTH, AND FINAL, POINT IS THAT DEATH SENTENCING IS HIGHLY UNPREDICTABLE. DIFFERENT JURIES DECIDE CASES DIFFERENTLY. ON THE SAME FACTS, ONE JURY MAY SENTENCE TO DEATH; ANOTHER, TO LIFE, OR JUST A TERM OF YEARS. ARE WE WILLING TO ACCEPT THIS LEVEL OF DISPARITY AND UNCERTAINTY, PARTICULARLY FOR OUR YOUTH?

WE HAVE ALL HEARD TODAY THAT OUR BRAINS CONTINUE TO DEVELOP WELL INTO OUR LATE TEEN YEARS—AND THE AREAS THAT ARE THE SLOWEST TO MATURE ARE THOSE RESPONSIBLE FOR IMPULSE CONTROL AND JUDGMENT. IN A CIVILIZED SOCIETY SUCH AS OURS, WE SIMPLY MUST ACKNOWLEDGE THAT SUCH DEVELOPMENTAL DISTINCTIONS BETWEEN TEENAGERS AND ADULTS RENDER TEENS LESS CULPABLE FOR THEIR ACTS THAN ADULTS. THAT IS WHY I SUGGEST TO YOU THAT RAISING THE AGE OF DEATH ELIGIBILITY TO 18 IS A POLICY DECISION TO BE MADE BY OUR ELECTED REPRESENTATIVES, AND NOT A CASE BY CASE DECISION TO BE MADE INDIVIDUALLY BY EACH JURY.

THE DEATH PENALTY IS TO BE RESERVED FOR "THE WORST OF THE WORST." NEVADA NEEDS TO ACKNOWLEDGE THAT, AS A MATTER OF PUBLIC POLICY, WE ARE COMMITTED TO A DEATH PENALTY SYSTEM THAT REACHES ONLY THE WORST OF THE WORST. THOSE WHO ARE NOT EVEN

FULLY DEVELOPED NEURO-PHYSIOLOGICALLY CANNOT QUALIFY AS AMONG THE WORST OF THE WORST.

WE MUST ASSURE THAT EACH INDIVIDUAL'S PUNISHMENT REFLECTS HIS INDIVIDUAL CULPABILITY. THE CONTINUED EXISTENCE OF THE JUVENILE DEATH PENALTY MAKES THAT TASK MORE DIFFICULT THAN IT NEEDS TO BE, AND SERVES NO END OF WHICH WE CAN BE PROUD.

I URGE YOU TO JOIN THE GROWING MAJORITY OF STATES IN THE UNION AND RAISE THE AGE OF DEATH ELIGIBILITY TO 18.

H-5