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Chair  
House Corrections and Juvenile Justice Committee

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Death Penalty Informational Hearing - March 15, 2012  
House Corrections and Juvenile Justice Committee

Topic: The finality of death in an imperfect criminal justice system

I served as a judge of the District Court in the 27th Judicial District (Reno County) for 26 years. My case assignments consisted almost exclusively of criminal cases. Very early in my career I learned that the clear-cut easy decision issues were uncommon in contested hearings and trials. I did my best in exercising my judgment. I had a written quote from an unknown source taped to my desktop my entire career: "When faced with a decision, make the best decision possible with the information you have at the time. The point of absolute certainty never arrives." In the majority of cases involving contested issues I left the courtroom uttering the phrase, "God, I hope I got that one right." Much less frequently did I feel the confidence of an absolute right decision. This was true across the board, from traffic infractions to off-grid felonies.

In this environment of uncertainty and imperfection we impose the finality and irreversibility of the death penalty. As long as the death penalty is a part of our imperfect system, there will always be the unacceptable possibility of the execution of an innocent person. The entire judicial system struggles and conscientiously works toward minimizing this risk, but it cannot be eliminated. The existence of the risk, no matter how small, of executing an innocent person is unacceptable.

The possibility of a wrongful conviction, whether it be in a court trial of a traffic infraction or a jury trial of capital murder, is due to human imperfections and emotional motives. We have known for several years about the blatant unreliability of eyewitness testimony. The emotional outburst "I know what I saw!!!" is not always true. More recently we are learning of the dynamics that lead to false confessions. They often involve unique individual personalities being subject to hours of very skillful and purposefully stressful and misleading

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interrogation. Another difficult evidentiary issue is the weight to be given recanted statements. Add to the mix blatantly false testimony by both state and defense witnesses. Attorneys on both sides seek to intentionally mislead the court.

The finder of fact, whether it be the court or a jury, must constantly be on guard against these imperfections. I was once naive enough to believe that everything contained within a sworn statement in court was the truth. I remember thinking early in my career when I heard testimony that I thought was suspect, "They wouldn't lie in court about a traffic infraction" or a misdemeanor marijuana case. The emotional and professional pressure is much more in a capital murder case. All of these imperfections and elements can lead to a false conviction.

I sincerely believe we have the best criminal justice system in the world with the greatest safeguards for the individual defendant. I am proud to have served in the judicial branch of government. However, our criminal justice is not perfect. And only with perfection could we justify imposing the death penalty. The possibility of executing an innocent person, no matter how slim, is unacceptable. "The point of absolute certainty never arrives."

Respectfully submitted.