

February 20, 2001

**Statement of William J. Leahy, Chief Counsel
of the Committee for Public Counsel Services,
Before the Joint Committee on Criminal Justice,
In Opposition To the Governor's Death Penalty Proposal**

Remarks As Prepared For Delivery

I am here today to reiterate our opposition to the creation of a death penalty in Massachusetts. Our opposition derives both from the nature of our responsibilities; and from our knowledge, based on experience, of how the justice system actually operates. We have stated this opposition publicly and without deviation since CPCS came into being in 1984. Particularly since 1991, when the death penalty became a visible gubernatorial initiative, we have many times presented sound and specific reasons against it. We are pleased to state those reasons again today. The House of Representatives has, time and again during the 1990's, demonstrated great wisdom and greater courage by rejecting the false allure of the death penalty, and choosing instead to fund and support crime prevention strategies which, unlike the death penalty, have been shown to produce positive results.

The Committee for Public Counsel Services is obliged to provide competent legal representation, as demanded by the federal and state Constitutions and Chapter 211D of the Massachusetts General Laws, to well over 200,000 indigent persons facing state-initiated criminal and certain kinds of civil cases every year. We feel keenly the daunting nature of this responsibility; and the enormous difficulty of securing annually the public funds which are necessary to fulfill it. We are convinced that the death penalty merits rejection not only because it is very bad public policy, as many speakers here today have argued; but also because its exorbitant cost would destroy our determined effort to provide a measure of justice to the Commonwealth's poor.

Cost: Here is the cost issue in a nutshell. Our 1999 survey of attorneys who represent indigent defendants charged with murder showed that **seventy-six percent of all persons charged with first degree murder in 1998 would have been eligible for execution under the Governor's death penalty proposal.** We have estimated that the annual cost of training, assigning, supporting and compensating death case defense counsel would be in the range of **fifty to sixty million dollars. In other words, more than the current annual cost of providing criminal defense representation to all 185,000 clients facing criminal charges.** This is not effective law enforcement. This is fiscal madness.

Effectiveness: The rate of murder in Massachusetts is among the lowest in the nation and, importantly, is less than that of any state which has and uses a death penalty. We have earned recognition as the nation's leader in developing effective, innovative approaches to violence prevention, particularly among youth. In his testimony against the death penalty here in

1999, Suffolk County District Attorney Ralph Martin noted the irony that a high proportion of the law enforcement officials who travel to Boston to learn from our successes in preventing violence come from death penalty states. DA Martin stated succinctly and convincingly why, as Boston's chief law enforcement officer, he opposes capital punishment: "I prefer to place my emphasis on what works."

Mistakes: They are inevitable in the trial of criminal cases, and they are legion in the recent history of capital punishment in America. Their existence was exposed at the November, 1999 conference on Wrongful Convictions in Capital Cases at Northwestern University School of Law in Chicago. Their reality is documented in the book Actual Innocence by Scheck, Neufeld and Dwyer. Most capital trials (sixty-eight percent) are infected with prosecutorial or judicial error so serious as to require reversal of the death sentence and/or the conviction itself, as demonstrated by Professor James Liebman's comprehensive study "**A Broken System: Error Rates in Capital Cases**" (Columbia University Law School, June, 2000). The rise of DNA technology does not protect the innocent in the many cases where DNA evidence is not decisive. Most wrongful convictions derive from age-old, still uncorrected problems such as honest but faulty eyewitness identifications (e.g., Bobby Joe Leaster); reliance on jailhouse or other criminal informants whose overwhelming motive to lie is overlooked by prosecutors bent on conviction; and, far too frequently in death penalty cases, the ineffective legal representation furnished by unqualified and untrained lawyers whose often disgraceful performance is matched only by the pathetic level of their compensation.

Finally, mistakes are inevitable as long as law enforcement and society as a whole are prone to racial and ethnic intolerance. Massachusetts has experienced the danger of wrongful convictions when police and prosecutorial power intersect with widespread public prejudice, often fanned by media sensationalism. From Sacco and Vanzetti early in the last century, to Charles Stuart's murderous scheme which trapped Willie Bennett, we know this source of injustice all too well. Mistakes, of course, can be corrected. But, as the Justices of our Supreme Judicial Court have reminded us on occasion, their considerable corrective power does not extend to raising the dead. Capital punishment simply does not comport with a criminal justice system which aims to correct, whenever uncovered, the inevitable mistakes which occur in the trial of criminal cases.

Conclusion: The case for the death penalty as part of a workable and cost-effective crime prevention policy has never been made. Since its most recent rejection by the House of Representatives in 1999, much more damaging evidence of its unworthiness has come to light. If Massachusetts is to further improve the public's safety, as it should, the effective way to do it is to set aside a tiny portion of the money saved by rejecting the death penalty, and allocate that fund to existing programs which have proven their crime prevention worth, or which open promising new approaches to shutting down the cycle of crime. I conclude as I concluded in 1999: the last thing this Commonwealth needs is reinstatement of the death penalty.