

July 1, 1994

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

Section 3 of the Weld-Cellucci death penalty bill requires that two lawyers be assigned to every capital case, at both the trial and appellate stages, and requires that each attorney

°be familiar with the law and practice in capital cases, and

°have completed training in current developments in the representation of capital defendants, and

°demonstrate the proficiency and commitment necessary to providing legal services in [sic] capital clients.

I now assign counsel for every indigent defendant charged with murder in the Commonwealth under G.L. c.211D, §8. I can inform the Committee that none of the 238 attorneys who are presently eligible to accept murder assignments in Massachusetts would qualify for certification in capital cases under these guidelines: all would require intensive training in the exceedingly complicated law and procedures of capital litigation in order to be certified; and many would not be certified at all. We estimate that we would need a minimum of \$1 million to set up a Capital Training, Certification and Resource Unit just to set up and operate a system for providing counsel in capital cases.

I can further inform you that over my three years as chief counsel, I have made assignments in an average of 200 murder cases annually--just about four per week. (See Attachment A, "Adult Murder Cases Per Year in Massachusetts.") Since, under this bill, it cannot be known before grand jury indictment whether the case is a potential death case, we will need to assign two capital case certified counsel at District Court arraignment in every one of these cases.

How many of these 200 cases annually will be indicted for

capital murder? Only the District Attorneys could speculate. What we have done is to conduct two separate comprehensive surveys of all attorneys who were assigned to murder cases during a) the second half of calendar year 1991 and b) the entire calendar year 1992. We were careful to screen out juvenile cases, and cases in which the grand jury returned second-degree murder or manslaughter charges, or refused to indict. We had each attorney complete a form which identified whether the prosecution's allegations contained one or more of the aggravating circumstances which would make the case death penalty-eligible under this bill.

The results of these surveys are consistent and shocking. They show that at least 50%* of all murder cases contain allegations of facts which would constitute aggravating circumstances under this bill. (See Attachment B, "Massachusetts Cases Eligible for the Death Penalty.") We have retained these survey results; they are available for examination by committee members or staff. They demonstrate that a minimum of 100 cases per year will be eligible for indictment as capital murders.

The cost of compensating two counsel at every stage of these cases "at a reasonable rate in light of the attorney's qualifications and experience and the local market for legal representation in cases reflecting the complexity and responsibility of capital cases[,]" as the bill provides, is certain to be exorbitant. Yet it is only one of many dramatic fiscal, systemic and human impacts which would be wrought by this bill. I reiterate Geraldine Hines' plea that the Legislature undertake an honest assessment of the true costs of enacting this death penalty bill.

* This percentage does not include any case in which the attorney failed to respond, or did not yet have enough information about the case to complete the survey.

