

May 9, 1997

**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**

The Committee for Public Counsel Services has, from its inception in 1984, adamantly opposed the reinstatement of capital punishment in Massachusetts. We believe that to reinstate the death penalty, fully fifty years after the last execution performed by the state, would be a horrible mistake. We hold this view for several independent reasons.

- (1) The death penalty is morally wrong, as all major religions and virtually all established democracies have recognized. As former House Speaker Charles Flaherty has stated, capital punishment is wrong because it "imitates the violence it claims to abhor."
- (2) Mistakes are inevitable. Until the day arrives when criminal prosecutions need not be based upon fallible human perceptions; when witnesses possess no motive to lie; when prosecutors never yield their professional judgment to the passion for revenge or political gain; when judges' rulings are always correct and juries' judgments are never tainted--until that unlikely day, we should not elevate the inevitable factual mistakes of the criminal justice process into fatal and irreversible consequences. The likelihood of fatal error, as Speaker Finneran so eloquently argued during the 1994 House debate, is an inevitable consequence of any death penalty enactment, however carefully drafted and however conscientiously applied.
- (3) The death penalty operates in a racially discriminatory manner. Reputable studies have proven that in states which conduct executions, the convicted killer of a white person is overwhelmingly more likely to be put to

death than the killer of a black person. Thus capital punishment, as it actually operates today in the United States, conveys the unmistakable and insidious message that our government places a higher value on white life than it does on black life.

- (4) The death penalty is the enemy of fair and effective law enforcement. It dominates the resources and priorities of courts, prosecutors, public defenders and police alike. Massachusetts, which has a low and declining homicide rate and is recognized as a national leader in creative approaches to reducing juvenile crime, should have no interest in seeing its truly effective criminal justice programs undermined by a sound-bite death penalty enactment which does not work and does nothing but divert law enforcement resources from programs which do work. The chief architect of Florida's death penalty statute, a career prosecutor, summed up his conclusions after two decades of active death penalty prosecution this way:

"It's a merry-go-round, its ridiculous: it's so clogged up only an arbitrary few ever get it.... I don't get any damn pleasure out of the death penalty and I never have.... And frankly, if they abolished it tomorrow, I'd go get drunk in celebration."

Prosecutor Ray Marky, in Why The Death Penalty Doesn't Work, by David Von Drehle, The Washington Post Magazine, February 5, 1995

- (5) The death penalty is a barbaric vestige of a less civilized age; as the Supreme Judicial Court of this Commonwealth has recognized in its three major decisions striking down death penalty enactments as unconstitutional. Commonwealth v. Colon-Cruz, 393 Mass. 150 (1984); District Attorney v. Watson, 381 Mass. 648 (1980); Commonwealth v. O'Neal, 369 Mass. 242 (1976). Its reinstatement, far from protecting the citizens of this Commonwealth, would disrupt the social fabric as individual human beings charged with the crime of murder are singled out -- for good reason, for bad reason or for no reason -- for potential execution.
- (6) There is one widespread misconception about the

Governor's death penalty bill which must be understood.

The Governor has asserted that this bill "reserves the death penalty for the most heinous of criminals." It does no such thing. As the assigning authority for all indigent defendants accused of first-degree murder, the Committee for Public Counsel Services conducted two separate comprehensive surveys of all attorneys who were assigned to murder cases. The first survey covered the second half of 1991 (when the administration filed its initial death penalty bill), and the second covered all of 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 Massachusetts murder cases contain allegations of fact which would constitute aggravating circumstances under this bill.** See Attachment "Massachusetts Cases Eligible for the Death Penalty.") They demonstrate that some 100 cases per year would be eligible for indictment as capital murders if this proposal were enacted.

* 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.