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# The Process of the Governor's Council

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## THE PROCESS OF THE GOVERNOR'S COUNCIL

*Michael J. Sullivan*

As a member of the Governor's Council I want to briefly touch on the process we went through in producing this Report. First, it was a collection of attorneys, both defense and prosecutors. The judiciary was represented, as was the scientific and the legal scholar community. Professor Hoffmann mentioned that he is not sure even today which members of the Council were death penalty proponents and which members of the Council were adamantly opposed to any type of death penalty proposal in Massachusetts. Quite candidly, I'm not sure either. You might be able to get a sense of this during the course of discussion about the number of aggravating circumstances that

should be considered, or how broad or how narrowly defined the list should be, but everybody's objective ultimately was to ensure, as best as humanly possible, that only those who are guilty could ever be sentenced to death in the Commonwealth of Massachusetts.

Even though there has not been much debate about the oversight by the State Attorney General amongst the eleven elected District Attorneys in the Commonwealth of Massachusetts, it would clearly be new and unusual from the independently elected District Attorneys' perspective. I think people recognize that it is important to have some level of consistency in the death penalty's application; it should be narrowly defined and consistently applied so that one area of the state is not going to be treated differently because of either political or philosophical considerations by an elected District Attorney. It will be interesting to see, if this provision is fully debated, whether or not the District Attorneys as a body believe that the State Attorney General is the proper reviewing office or if some other system of review can achieve the same balance.

The other area that I think is quite interesting and potentially controversial is the limited scope of the death penalty under this proposal. Of all the homicide cases in Massachusetts, very few would be eligible under this proposal. In fact, one could argue that the murders that the public become most enraged about, oftentimes murder of the most vulnerable, are the ones that are least represented in these proposals. And when you're thinking about enacting legislation in a state that does not presently have a death penalty, it appears to me that this proposal does not have any natural constituency groups, whether it's law enforcement or victim's families, that would be advocates for this death penalty. I find that very interesting and potentially controversial as well.

I greatly enjoyed the experience. And I really have to compliment Professor Hoffmann and Dr. Bieber for the tremendous leadership that they provided to a very diverse group. The Report suggests eleven members, but, you know, clearly the Governor's Deputy Chief Legal Counsel, Bill Meade, was a critically important partner in the process as well, and I think he deserves equal recognition also. Thank you.