

particular aggravating circumstances without having previously notified the defendant of its intention to do so. 15

The fact that the statute itself does not require such pretrial notice certainly does not mean that pretrial notice could not be furnished as a matter of course by prosecuting attorneys or that the Court of Appeals could not adopt a rule of statewide application calling at least for general prior notification of the fact that the death penalty will be sought. 16 Obviously, in light of our view that such prior notification comports with a basic sense of fairness and justice, we would urge such a course of action upon the State's Attorneys and the Court of Appeals.

We have previously commented in an opinion to Delegate Isaiah Dixon of March 17, 1977, on the subject of aiders, abettors and counselors in the context of capital punishment. Since those remarks, which were given in connection with a proposed amendment to House Bill 785, are equally appropriate here, we should repeat them for your benefit. 17

"While it is our considered opinion that it is constitutionally preferable to subject aiders, abettors and counselors to the same possible penalty as the actual perpetrator, no controlling judicial authority of which we are aware supports a conclusion that the failure to do so would render a capital punishment statute facially unconstitutional. We should hasten to add that it is possible that in a given case where the aider, abettor or counselor is the true culprit and the actual perpetrator simply a tool of the accomplice the courts might find a violation of equal protection grounded in subjecting the perpetrator to capital punishment but not the accomplice. We must concede that the likelihood of such a result occurring in a particular case is diminished by the presence in House Bill 785 of certain mitigating circumstances which would tend to protect an actual perpetrator who was acting under the domination of others." [The same type of mitigating circumstances are contained in Senate Bill 106.]

We should also bring to your attention one practical feature of Senate Bill 106 pertaining to the preparation of presentence reports and the necessity for conducting sentencing proceedings promptly following the completion of the guilt determination. Art. 41, § 124(c) of the Annotated Code of Maryland (1971 Repl. Vol., 1976 Cum. Supp.) requires that prior to the sentencing of a defendant convicted of a felony a presentence investigation must be completed by the Division of Parole