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"If this isn't nice, I don't know what is"

Remarks on Massachusetts Right-to-Counsel Day

By CPCS Chief Counsel William J. Leahy

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These simple words were attributed by Kurt Vonnegut, in his 2005 book *A Man Without A Country*, to his kindly Uncle Alex as they sat sipping lemonade under an apple tree on a summer day in Indiana long ago. I quote them because they describe perfectly my feeling of utter satisfaction as I stand before you tonight; and also because I believe every American ought to read Vonnegut's passionate plea that we recapture the values of honor and compassion which once marked this nation as special, if not unique. But please take note of my use of the word "satisfaction," because I must come back to it, and qualify it, at the very end of my remarks.

Before I speak to our CPCS family, I must acknowledge the members of my own family: not because it is traditional or expected that one do so, but because

their support has been so critical to whatever success I have been able to achieve; and also because they have paid a price by the combination of my personal imperfection and my single-minded involvement in preserving and extending the right to counsel through CPCS. Kathleen, we have supported each other through law school and social work school. I remember my thirtieth birthday when you surprised me with a cake at the Cambridge office, and I thought being thirty marked the onset of elder status. You have supported me every step of the way, and I want you know how much I appreciate that. Aidan, my son, is an extremely smart guy. Ten years ago, when he was just a teenager, he would tell me that CPCS appears to protect every provision of the Bill of Rights except one, the Second Amendment. He would also ask, years before the Forensic Academy of Sciences Report, why we were not more aggressively challenging the introduction of forensic evidence--I recall fingerprint evidence being specifically mentioned--which he called, even then, junk science. He studied at Oxford for a year and graduated with high honors from Sarah Lawrence College. Aidan, I don't know exactly where you are going to make your mark, but I do know that you are not just going to succeed. You are going to excel. My favorite story about Hannah is that in the first week of 9th grade, she came home soaking wet in a rainstorm. She had insisted on leaving the school bus two miles from home, in protest of the bus driver's unwillingness to enforce the prohibition against smoking by older students. Hannah has always had a strong desire to help people become healthier and defeat diseases. She is now halfway through medical school and in sight of accomplishing her goal. Eliza, my youngest child, is an environmentalist and a terrific writer. A couple of years ago, she wrote a poem for me with the intriguing title, "Ode to a Pair of Lifeless, Smelly Shoes." The poem was about a lot more than shoes. It was about a man's struggle to age gracefully and responsibly, and I read it frequently. Eliza is also the kind of person who can light up a room with her presence. Eliza, thank you for flying in from Minnesota to be with us tonight, and good luck in your studies at Macalester College.

The only aspect of this wonderful evening for which I bear responsibility is the date. I did insist that it be held on what I call Right to Counsel Day in

Massachusetts: the very day on which, in 2004, the Supreme Judicial Court upheld every person's right to the Effective Assistance of Counsel in its historic decision in the *Lavallee* case; and the very day in 2005 when the House and the Senate passed—unanimously--Chapter 54 of the Acts of 2005. In my opinion, this day deserves to be celebrated every year, both to serve as an annual remembrance of what has been accomplished and as a rededication to correcting the many shortcomings that must still be addressed.

That 2010 also marks the 75th anniversary of the founding of the Voluntary Defenders Committee in 1935, and the 50th anniversary of the Massachusetts Defenders Committee in 1960, and the 38th anniversary of the creation of the Roxbury Defenders Committee and the revitalization of the MDC in 1972, and that so many contributors to those successes are here with us, also makes this night incredibly special. In particular, I want to recognize Attorney Joe Balliro of the Voluntary Defenders Committee, Walter Prince of the Roxbury Defenders Committee, and Jerry Schaefer of the Massachusetts Defenders Committee.

Last weekend, while cleaning out my office, I came across this 19 year old little piece of paper. It contains a reminder to ask Stan Goldman why chapter 123, section 17 (b) contains no standard of proof and no right to a jury trial. By the way, Stan, I'm still asking. It contains inartistic scribbles and doodles; and it contains five numbered items which reference the priorities I identified to the CPCS Committee members at my interview in May, 1991. Those priorities were:

- (1) Agency credibility
- (2) Private bar relations
- (3) Alliance building
- (4) Plan to control costs
- (5) Morale of staff

I think we have done pretty well in achieving our goals in these areas over the years; though occasionally a person who fails to understand that good legal representation costs money does quibble with our performance regarding priority number four.

When I composed that list, I had not thought to add, “continue Arnie Rosenfeld’s legacy of active involvement in major policy issues which affect our clients,” because that goal seemed obvious and established. But no sooner had I become chief counsel on July 1, 1991, than that priority rose to the fore almost immediately, when the *Boston Herald* saw fit to blame CPCS for a judge’s decision to assign counsel to a person who was accused of taking a woman out on his boat, and failing to return her to shore. I did not envision that my first media activity would come so soon, or involve this issue, but I proceeded to educate the journalists about the process for determining a defendant’s eligibility for counsel at state expense. Then, in October, when Lisa Hewitt, Jay Blitzman and I appeared at the Legislature to testify against Governor Weld’s bill to impose harsh adult prison sentences on a large proportion of juveniles charged with delinquency offenses, I was surprised to receive criticism of our very right to speak on policy issues, and veiled threats of retaliation against us for having done so. This issue of speaking out had been decided by the Committee in its first months of operation in 1984, with particular respect to the death penalty and then-Governor Dukakis’ presumptive sentencing proposal. The decision to be a prominent and influential voice on issues of policy affecting our clients was a fundamental Committee decision, reached after full consideration of possible consequences, and I was not about to turn my back on it. We responded with a forceful written defense of our activism; a document that mysteriously--to this day I cannot imagine how--found its way onto the desk of every legislator and not a few reporters, and produced a public consensus that the Governor had overstepped. The force of this victory was such that 14 years later, when a *Herald* op-ed columnist questioned our right to criticize Massachusetts’ castigation of former sex offenders, I fired back quickly with specific reference to the 1991 controversy; and the furor quickly died.

The third big challenge during my first six months came in November, 1991, when Governor Weld filed his proposal to reinstate the death penalty, and predicted that his bill would be enacted by the end of the legislative session. We immediately wrote to every lawyer who represented CPCS clients, urging them to

contact their elected officials to oppose the death penalty bill. Now that was activism, and it has continued to this day.

Let me say why I think we have been so successful, and what we have to do to build upon that success. We have been successful, I submit, because we have been so highly motivated to fulfill the promise of the Constitution as set forth in the *Gideon* decision and in our federal Bill of Rights and our Commonwealth's earlier and even more forceful Declaration of Rights. Too many public agencies too closely resemble the caricature of "good enough for government work"; that pernicious slogan that suggests that mediocrity is sufficient when the amorphous general public, rather than a paying client, freights the bill. While some commentators draw this easy parallel between assumed private sector excellence and public sector indifference, my own experience demonstrates that a commitment to excellence and a uniformly high quality of performance is not dependent on which sector one works in, but rather springs from the depth of one's belief in the value of the work that you do. For us at CPCS--all of us, staff and private counsel alike--it is the client's plight and the client's entitlement to zealous representation which drives us to seek perfection, and to insist upon continuous improvement in all aspects of our performance. We are client-centered and Constitution-driven, and we do not settle for second-rate. As I said in my retirement letter last November, our duty is to give every client the Effective Assistance of Counsel, not some pale pretense of it.

You know I am coming to the end, because I am now returning to that word satisfaction, which I said at the outset is what I feel tonight. Yesterday I was interviewed for a story in *The Cornerstone*, a publication of the National Legal Aid and Defender Association. I was asked to describe my biggest fear about the future of public defense in America. My unscripted answer did not speak of the familiar concerns about underfunding or over-criminalization or the absence of performance standards or inadequate oversight. I said that what I feared most was the tendency of institutions to become self-satisfied over time, and the risk of public defender agencies in particular to elevate their own institutional maintenance or growth over their responsibility to the clients whom they were

created to serve. The more I think about it, the more I am convinced that these tendencies toward self-satisfaction and institutional protection are hidden traps for the unwary.

The good news is that we at CPCS are not unwary. We are ever watchful, we are self-critical, and we are insistent upon the conscientious fulfillment of our profoundly important societal role. High expectations, low caseloads, rigorous standards and active policy involvement: those are the CPCS equivalent of the beer company's "Tastes Great, Less Filling." Let me close by saying how proud I am to have served these thirty-six years in an agency which always promotes and never discourages the pursuit of the best possible representation for the poor, and to announce my intention to come back thirty-six years hence--when, after all, I will only be 100--to celebrate the continuation of this epic success story.