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TO: CPCS Staff, Committee Members
and Certified Murder Counsel

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FROM: ^{W.J.L.} William J. Leahy, Chief Counsel

RE: **THE DEATH PENALTY**

Around 10:30 last night, the House of Representatives voted by 81-79 to reinstate the death penalty in Massachusetts. A House-Senate conference committee is expected to reconcile differences between the two bills, after which the final version must be considered by a vote in each branch. Assuming final legislative approval, the Governor has already made clear his intent to sign the final version into law.

Under both bills, CPCS is the counsel-assigning authority in death-eligible cases. Under the House bill, we must provide estimates of the staffing and fiscal resources required to fulfill our responsibilities under the statute. This we have already begun to do.

During the debate, death penalty proponents gave many assurances that the counsel and other procedural protections put in place by the bill would be effective. It is our duty to see that they are effective. This will require enormous funding, planning, training and support for the lawyers who will be called upon to defend death-case defendants.

I have already requested a meeting with House Ways and Means Committee chairman Paul R. Haley to urge immediate funding for the short-term resources which are necessary for us to begin preparations for death case defense. I have drafted a letter of thanks to the 79 courageous representatives who voted against death. I have thanked elected officials such as Attorney General Scott Harshbarger and Suffolk County District Attorney Ralph Martin who have had the heart to stand publicly by their principles. I have formed a planning committee to identify the personnel and resource needs that we will require to enable Massachusetts public defenders and private counsel to conduct death case defense representa-

tion every bit as competently as they presently provide murder case representation. We have begun to scrutinize the bills for areas of vulnerability and potential challenge.

I want to close with a personal perspective. This defeat hurts deeply: its impact upon our clients and its reflection of the brutalizing of our society would be hard to exaggerate. I have always felt that with respect to the death penalty, Massachusetts is different: that there is a wellspring of anti-death penalty passion and commitment here which is tragically absent in many other states. Last night's vote was a devastating blow to that assessment.

But there is another personal perspective which involves this unappreciated, misunderstood, bureaucratically-named agency which we oversee as committee members, work for as employees, or through which we accept assignments as private counsel. For six long years, the adamant and unrelenting opposition of CPCS as an agency, and so many of us personally, in cooperation with other organizations and persons opposed to the death penalty, have managed to convince the Legislature to resist the false allure of capital punishment. That is a matter of institutional pride and courage that we ought not forget in this dark hour. In fact we were at our finest during the uphill battle to keep Massachusetts death-penalty free. During the days and nights leading up to the vote, CPCS banded together--private lawyers, public defenders and committee members alike--to help Lisa Hewitt and Nona Walker and our allies educate legislators all over the state how phony and wrong death sentences are as a way of responding to and preventing murder.

There is one more fact to remember. This agency and the people who represent its impoverished clients do not give up. We will fight for every penny needed to train and compensate the lawyers, investigators and others who will provide this life-or-death representation. We will represent each and every client as zealously as the law and the rules of our profession allow. We will contest every death penalty prosecution with all the vigor and resources we can assemble. As far as I am concerned, Massachusetts will not soon violate its over fifty-year abstinence from state executions. As far as I am concerned, Massachusetts will not ever execute anyone; as long as we exist and maintain our collective resolve. Several death penalty proponents last night described their penchant for savagery as "the moral equivalent of war." Once this obscene bill is enacted, if it is enacted, the legal war begins. I cannot imagine a more resourceful or dedicated or passionate group of people than you to join me as combatants in it.

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