

MARYLAND COMMISSION ON CAPITAL PUNISHMENT

**Testimony of Stuart O. Simms
August 5, 2008**

Thank you for the opportunity to present remarks concerning a subject that continues to be a matter of significant importance to Maryland's and this nation's system of criminal justice.

I have been involved in this issue in various aspects for nearly thirty years. First, I had to address this issue as Deputy State's Attorney and later as State's Attorney for Baltimore City from 1983 through 1995. Second, I served as a member of two separate gubernatorial task forces charged with examining the death penalty. In 1993, I participated as a member of the initial commission under former Governor Schaefer. In 1995, I served as a member of a subsequent commission under former Governor Glendening which examined the imposition of the death penalty in Maryland. Third, I served as Secretary of the Maryland Department of Public Safety & Correctional Services from 1997 through 2002. The Department of Public Safety & Correctional Services is the state agency housing the Division of Corrections which is charged with carrying out court-ordered executions.

Based on my experiences, I believe that Maryland needs to break free from old thinking about criminal law and criminal justice and eliminate the death penalty as an option in criminal cases. Our current model can no longer be tailored or fixed.

My reasons in support of this approach are as follows:

Significant time, energy and expense of prosecutors, defense counsel, witnesses and survivors are consumed by the difficult task of administering, managing and sometimes litigating death penalty cases. These cases require enormous resources. Those resources range from multiple prosecuting attorneys, multiple experts and significant time commitments for investigation, preparation, motions and trials. One or more death penalty cases can consume prosecutorial resources that could risk support for other worthy criminal prosecutions. Moreover, even with such a commitment of resources, one is not guaranteed a successful outcome. The trial and sentencing phases of the case must be legally perfect and in this day and age, it is almost impossible to avoid any type of legal error. Public safety might be greatly enhanced if these resources were instead invested in law enforcement for improved investigation, especially laboratory and technical investigation, and in victim services programs for counseling and support benefits.

An elected prosecutor also has the difficult task of sometimes making value judgments when considering the filing of a death penalty notice. Are the multiple homicides of known narcotics dealers or others involved in illegal activity worth the investment of prosecutorial resources? Is that prosecution more important than a homicide case in which the death penalty is not filed?

The challenge of adequate resources also arises in government in the actual imposition of the death penalty sentence. When assigning internal correctional staff to carry out court-ordered executions, today's correctional managers understand that their staff's attention, time and expense will be devoted to training and practice exercises involving executions. This increased time for rehearsals diverts staff from their daily security responsibilities and presents a possible risk for safety of inmates, correctional officers and the public.

In addition, the death penalty process in corrections has the potential of restricting progress in one of the most important areas for improvement in delivery of correctional services. As reflected in a recent article in the New York Times Magazine (*See, February 11, 2007*), the entire process of executions has increasingly placed the professional correctional community in conflict with the medical community. The medical profession, whether licensed physicians or physician assistants, are frequently recusing themselves from involvement in executions citing regulatory and licensing concerns. Therefore, the ability to timely obtain physicians to instruct, monitor or administer medical or other services during the execution process is becoming increasingly difficult. This conflict between the medical and correctional community arises at an unfortunate time. For several years, correctional professionals and the medical community have in recent years been attempting to improve health services for jails and prisons and give special attention to substance abuse, mental health and communicable disease prevention.

One of the most important components in our democracy is the legitimization our nation's criminal justice system. Because of their unique role, prosecutors occupy a critical role in the eyes of the public who in the words of scholar Mark Moore of the Kennedy School of Government "observe it, are subject to it and seek to use it." As a result of the perception of fairness is uniquely important to entire criminal justice process concerning both the system and those intimately involved its administration. As a result the finding by two commissions that although there is no evidence of intentional discrimination in the implementation of the death penalty; racial disparities are evident and remain a matter of concern. (See, Finding No. 10 in the 1993 Report). A statistical imbalance in this area is simply unacceptable and irreconcilable with the notion of fairness. The implication left for the public is that racial imbalance in capital punishment cases is left unchecked by our democracy.

Finally, this State has had the option of seeking to seek life without parole in capital cases for several years. It is a unique option that has the potential of fair implementation without the type of expensive litigation investment required in death penalty cases. The penal system of our nation and our state are not inviting environments. Life without parole in them is a sanction that is real and is significant.

Thank you.