



Capital punishment commission holds final public session

By Jennifer McMenamin

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James P. Abbott, police chief of West Orange, N.J., says he is convinced that there is "simply no way to fix" the death penalty. (Baltimore Sun photo by Amy Davis / September 22, 2008)

As a police chief in New Jersey, James P. Abbott believed in the death penalty.

He supported capital punishment as a way of protecting not only the public, but specifically his fellow officers and the correctional guards working in prisons.

Then he spent a year serving on a New Jersey commission that studied the death penalty, and he completely reversed his view.

"It turned out that what sounded good in theory was actually a complete failure in practice," he told members of Maryland's capital punishment commission yesterday in Annapolis. He noted that he was most influenced by the suffering that victims' families endure through years of appeals and reversals in capital murder cases. "And I am convinced that there is simply no way to fix it and make it right."

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Abbott was one of seven expert witnesses and about two dozen members of the public - including former Maryland Attorney General J. Joseph Curran Jr. - to testify at yesterday's hearing. It was the last such meeting before the commission begins discussing and formulating the recommendations that it must present to the governor and General Assembly by mid-December.

The panel also heard expert testimony yesterday from the attorney who heads the forensics division of Maryland's Office of the Public Defender and a top public defender in Baltimore County, the jurisdiction where prosecutors have sought more death sentences than anywhere else in the state.

Patrick Kent, the forensics chief, highlighted instances of crime lab analysts' incompetence and misconduct as well as discredited science that have contributed to wrongful convictions over the years. He warned commission members that DNA and other forensic sciences should play an important role in criminal court cases but cannot ensure an infallible system that convicts only the guilty.

"Is Maryland immune? It is not because we, too, base our science on the frailty of human beings," he said. He later added, "The only way we can say we are not executing the innocent is simply not to execute."

Donald E. Zaremba, the deputy Baltimore County public defender who has handled capital cases, told commission members that spiraling caseloads make it difficult to devote the necessary amount of time to death penalty cases as well as the more routine cases.

"This is a criminal justice system that struggles to do a good job for just the ordinary. It can't keep up with the demands of the extraordinary and expect that mistakes will not be made," he said. "If that's the case, what we have is a system in which the death penalty is applied in an arbitrary and capricious fashion."

The commission also heard yesterday from former Sen. Joseph Davies Tydings, who has both prosecuted and defended capital cases, an economics professor and the regional leaders from the Presbyterian Church and United Church of Christ. Several longtime correctional administrators, including the retired assistant director of the Federal Bureau of Prisons, testified that the death penalty does not serve as a deterrent to crime behind bars. And three women who spoke toward the end of the 5 1/2 -hour hearing read letters from former and current death row inmates in Maryland.

Established this year by the state legislature and led by Benjamin R. Civiletti, who served as U.S. attorney general under [President Jimmy Carter](#), the 23-member commission includes a police chief, a former death row inmate who was exonerated by DNA evidence, a rabbi, a bishop, three family members of murder victims, several legislators and a county prosecutor who has handled capital cases and made the decision to seek the death penalty in others.

Maryland has had an effective ban on use of its death chamber since December 2006, when the state's highest court ruled that execution protocols that detail the steps to put a condemned prisoner to death were improperly developed.

In May, [Gov. Martin O'Malley](#) took the first step toward ending that moratorium, ordering the drafting of new lethal injection procedures. The governor, who opposes capital punishment, had held off ordering new protocols to give lawmakers another chance to consider repealing the death penalty. But a bill to replace capital punishment with life without parole stalled last spring for a second year in a row.

In its place, lawmakers established the commission.

Abbott, the police chief of West Orange, N.J., served on the commission that unanimously recommended the

repeal of that state's death penalty. In December, the New Jersey legislature did so, becoming the first state in decades to overturn capital punishment.

The police chief said he now "unequivocally" opposes the death penalty as a sentencing option for someone convicted of killing a police officer and that he would "never, ever" want his wife and children to go through a capital prosecution if he were killed in the line of duty. "You can continue to support the death penalty," he told them, "and also to support getting rid of it."

Several commission members expressed surprise at his reversal.

William Spellbring, a former prosecutor and retired judge from [Prince George's County](#), asked what the police chief would tell the family of an inmate or prison guard killed by someone already serving life without parole.

"Prisons are bad places, and bad things happen there," Abbott responded. "I don't know what you tell the family. It's not an answer I came to easily."