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Testimony Prepared for the
Maryland Commission on Capital Punishment
Benjamin R. Civiletti, Chair
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Mr. Chairman and members of this Commission thank you for this opportunity to speak about capital justice in Maryland. I am Lee Hudson, Maryland advocate for the Evangelical Lutheran Church in America, a faith community of two-hundred and ten Maryland congregations in three of its synods. Ours is one of many United States religious communities opposed to capital punishment. The primary reason for our opposition is that which has been demonstrated in Maryland: death sentences are capriciously imposed and unequally applied. It is our position that, "Despite attempts to provide legal safeguards, the death penalty has not been and cannot be made fair." ("The Death Penalty," ELCA Social Statement, 1991).

Opposition within our community occurred in a predecessor body to the current church, the Lutheran Church in America, which adopted a position against the death penalty in 1966 ("Capital Punishment: A Social Statement of the Lutheran Church in America"). Perhaps more important is the consensus among our colleagues in the global communion of our faith tradition, the Lutheran World Federation, where many of the member churches oppose capital punishment in their societies. It is important to call attention to this international consensus against capital punishment because the United States remains one of a handful of developed societies that clings to this instrument.

Our community's opposition is specific to the United States but shares the spirit and insight of a larger, global consensus within our faith tradition. It is a judgment of experience that capital justice fails first of all as justice, and then as public security, equal rights, and due process. Many societies have come to this conclusion because their citizens experienced the procedural and equality failures that consistently attend lethal punishment. This is among the reasons our community reached the conclusion that this form of punishment fundamentally cannot be made fair.

Maryland capital justice has these problems, leaving aside the pending issue of the promulgation of its death protocols: the standard of proof for imposition of death is too low; race is a principal indicator for who gets executed; and, most gravely, wrongful prosecution in death-eligible crimes and has more than once convicted the wrong person (whether that sentence was sought or not).

We hold it is unreasonable for the State to administer executions in certainty it is realizing justice. But when the common witness of our community is gathered together, Maryland's justice failures are merely illustrative of learning and experience in other societies. Permit this example:

The Namibian Lutheran Church advocated abolition of the death penalty in the human rights section of that state's constitution, adopted March 16th, 1990. Namibia had been occupied for much of the twentieth century and when South Africa became the occupier its apartheid policy was forced on Namibian society. Death sentences, applied for security reasons under the South African Terrorism Act against those working for independence, had a racial predisposition. Prosecutorial misconduct was apparent. The church urged elimination of this policy option.

One point of this illustration is that the political use of death sentences is a theme in the history of their application. The central figure of the Christian movement is a capital criminal. From the second to the fourth centuries the movement was defined as an "age of martyrs" typically convicted as misanthropes and atheists. Martin Luther lived his entire, productive career under a death warrant legally issued by the civil authority.

Certainly there is a universe of difference between persecution of religious conscience or human rights pursuit and prosecution of criminal behavior against persons and societies. Those differences narrow, however, when the goal of prosecution is to "send a message" or exact revenge. Messaging should be a political and not judicial function.

Narrower is that difference when a penalty is attached to racial bias, as happens in Maryland. Our position is that anything with a racial bias surrenders the claim to be justice. We agree with those American jurists that have concluded the mechanics of death sentences and executions are so random and arbitrary as to be detached from actual civil justice. There have been no persistent, discernible patterns in capital sentencing in the United States save the race and economic status of the accused. By itself, this makes the death penalty a political rather than a juridical instrument, in this society and therefore in Maryland.

We believe the resources of the State would be better employed by strengthening investigatory capacities, policing, and prosecution of crime. Fairer, surer justice is in the interest of all citizens. The death penalty is in the interest of practically none. It doesn't produce safer communities, can't administer adequate justice, and exposes inequality within the social context. Our witness is that this is a learning and judgment not just in Maryland but in a global community with an exhaustive experience. We therefore urge the repeal of the death penalty.

With appreciation and for the Commission's attentive hearing, I thank you on behalf of the Evangelical Lutheran Church in America.

Lee Hudson