



# NACDL Testimony

March 23, 1998

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See also the related [press release](#) regarding Speedy Rice's statement.

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**Statement Against  
Death Penalty in the United States**

**by the  
National Association of Criminal Defense Lawyers (NACDL)**

**to the  
54<sup>th</sup> United Nations Commission On Human Rights**

**Speedy Rice  
March 23, 1998  
Geneva, Switzerland**

Organized by Hand Off Cain League for the abolition of the death penalty worldwide  
by 2000  
Under the Patronage of the UN Commissioner for Human Rights and with the support  
of the European Union

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The National Association of Criminal Defense Lawyers is a United States NGO with over 10,000 members. NACDL is an outspoken critic of the death penalty in the United States as well as an unfailing defender of the right to adequate counsel and resources for those accused of crime, especially capital crimes. Unfortunately, in the United States today there is an abundance of support for the death penalty and a lack of support for adequate counsel and resources for the capital accused. Three overriding facts permeate the American machinery of death. First, it is racially discriminatory. Second, is it economically discriminatory. Third, it is judicially bankrupt.

Capital punishment in the United States is a direct descendent of lynching and other forms of racial violence. It remains today as one of America's most prominent vestiges of slavery and racial oppression. The U.S. General Accounting Office analyzed 28 studies of capital sentencing and found a "remarkably consistent" pattern of racial disparities in capital sentencing throughout the United States.<sup>(1)</sup> African-Americans make up only 12 percent of the total United States population and half of the murder victims in the last 25 years have been African-Americans. Yet, 85 percent of the cases in which the death penalty has been carried out have involved white victims. The racial discrimination of the death penalty in the United States was also confirmed by the International Commission of Jurist after a visit and extensive study.<sup>(2)</sup> Study after study has confirmed that the death penalty in the United States is racially discriminatory. Nevertheless, the State and Federal court systems in America are indifferent to racial discrimination and have erected such unreasonable burdens of proof and difficult legal standards that it is now practically impossible to have the issue considered by any court in the United States.

Poor people accused of capital crimes are often defended by lawyers who lack the skills, resources and commitment to handle such serious matters.<sup>(3)</sup> This sad fact is confirmed in case after case where it is the quality of the appointed representation for the poor, not the facts of the case, that determines who is executed in the United States. For example, the failure of defense counsel to present critical information is one reason that Horace Dunkins was sentenced to death in Alabama. Before his execution, newspapers reported the Dunkins was mentally retarded.<sup>(4)</sup> This prompted a juror to come forward and state that she would not have voted for the death sentence if she had known of his condition.<sup>(5)</sup> Nevertheless, Dunkins was executed.

Inadequate legal representation of the poor, in capital cases, leaves them without the protections of the U.S. Bill of Rights. While the Bill of Rights is often held up to the world as evidence of the greatness of the American system of justice, it is, in reality, only a mirror to deflect world scrutiny of a shameful pattern of executing the poor. The State of Alabama limits compensation to court-appointed lawyers in capital cases to \$2,000 US.<sup>(6)</sup> Not surprisingly, some poor people in states such as Alabama, Texas and Florida, have been represented by lawyers who were intoxicated, ignorant of the law, failed to present critical evidence in mitigation at capital trials, or slept through portions of the trial. In Alabama, one court appointed attorney filed a one-page brief in the Alabama Supreme Court and did not show up for the oral argument. Carl Johnson in Texas was represented by an attorney who slept through significant portions of the trial. Texas State Courts and United States Federal Courts held that this was not ineffective assistance of counsel and Carl Johnson was executed on September 19, 1995.<sup>(7)</sup>

The American Bar Association studied the issues of fairness, representation and judicial review of the death penalty and concluded that a moratorium was called for until proper safeguards

could be implemented. The report regarding the implementation of the ABA's call for a moratorium demonstrates that whether someone is sentenced to death is influenced by poverty and race; that the mentally ill and mentally retarded, and children are not protected from the executioner; and that the role of the federal courts in preventing unconstitutional executions has been severely curtailed by the courts and the Congress.<sup>(8)</sup> There is undeniable evidence that innocent people are being executed and that the court system is doing little to prevent this travesty. In fact, American politicians acknowledge and support the execution of innocent persons. Rep. Bill McCollum of Florida said on a national television show this past year that the execution of innocent persons was a legitimate cost of an effective death penalty. Who we kill has become unimportant, all that matters is that we kill. Recently, a Federal Court of Appeals -- charged with defending the Constitution of the United States -- lifted the stay of execution of Horace Kelly, a man deemed insane by almost every doctor who has examined him, because of a procedural error made by the lower court. If Horace Kelly is executed as planned on April 14, 1998, it will make the first time in 45 years that California has executed an insane person. Procedural expediency to execute is valued by the courts over the concerns of actual innocence or mental incompetence.

This past December, NACDL along with 30 other prominent organizations, including the National Association for the Advancement of Colored People (NAACP) and Hands Off Cain, took the unprecedented step of asking the European Parliament for a resolution condemning the death penalty in the United States and inviting European companies not to invest in American States with death penalties. The deafness of American politicians on this issue must be confronted with constant and insistent world condemnation. Even though The Universal Declaration of Human Rights (December 10, 1958) does not contain specific language prohibiting the death penalty, the conduct of the United States is in clear violation of Articles 2 and 7 of that important proclamation.

Therefore, the National Association of Criminal Defense Lawyers asks the United Nations Commission on Human Rights to condemn the United States death penalty in the strongest terms possible and to call for an immediate moratorium of executions in the United States.

#### **Notes**

1. General Accounting Office, DEATH PENALTY SENTENCING: RESEARCH INDICATES PATTERN OF RACIAL DISPARITIES 5 (Feb. 1990).
2. International Commission of Jurist, ADMINISTRATION OF THE DEATH PENALTY IN THE UNITED STATES (June 1996).
3. Stephen B. Bright, COUNSEL FOR THE POOR: THE DEATH SENTENCE NOT FOR THE WORST CRIME BUT FOR THE WORST LAWYER, 103 Yale L.J. 1835 (May, 1994)
4. Id.
5. Peter Applebome, Two Electric Jolts in Alabama Execution, N.Y. TIMES, July 15, 1989, at A6.

6. Alabama Code Sec. 15-12-21(a).

7. David Dow, THE STATE, THE DEATH PENALTY, AND CARL JOHNSON, 37 B.C.L. Rev. 691, 694 (1996).

8. Stephen B. Bright, THE AMERICAN BAR ASSOCIATION'S RECOGNITION OF THE SACRIFICE IF FAIRNESS FOR RESULTS: WILL WE PAY THE PRICE FOR JUSTICE? 4 Geo. J. on Fighting Poverty 183 (Fall, 1996).

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