

Testimony of
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June 27, 2007

WASHINGTON BUREAU. NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF
COLORED PEOPLE

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STATEMENT OF MR. HILARY O. SHELTON
DIRECTOR
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ON THE FEDERAL DEATH PENALTY
BEFORE THE SENATE JUDICIARY COMMITTEE
SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS AND
PROPERTY RIGHTS

June 27, 2007

Good morning. My name is Hilary Shelton and I am the Director of the Washington Bureau of the NAACP, our Nation's oldest, largest and most widely recognized grassroots civil rights organization in the United States. The Washington Bureau is the legislative and public policy arm of the NAACP; we currently have more than 2,200 membership units in every state across the country.

The NAACP remains resolutely opposed to the death penalty, and as such I would like to offer our sincere thanks to the Chairman, Senator Feingold, for his unflinching efforts to end this practice at the federal level. You are indeed our champion and an inspiration for all on this issue. Thank you.

From the days of slavery, through years of lynchings and Jim Crow laws, and even today capital punishment has always been deeply affected by race. This is true among the states as well as at the federal level. Despite the fact that African Americans make up only 13% of our Nation's population¹, almost 50% of those who currently sit on the federal death row are African American².

Furthermore, across the Nation about 80% of the victims in the underlying murder in death penalty cases are white, while less than 50% of murder victims overall are white³. This statistic implies that white lives are valued more than those of racial or ethnic minorities in our criminal justice system.

Finally, the NAACP is very concerned about the number of people who have been exonerated since being placed on death row. Since 1973, over 120 people have been released from death row with evidence of their innocence⁴. The death penalty is the ultimate punishment, one that is impossible to reverse in light of new evidence.

The American criminal justice system has been historically, and remains today, deeply and disparately impacted by race. It is difficult for African Americans to have confidence in or be willing to work with an institution that is fraught with racism. And the fact that African Americans are so overrepresented on death row is alarming and disturbing, and certainly a critical element that leads to the distrust that exists in the African American community of our Nation's criminal justice system.

It bears repeating that 49% of all the people, or almost half of all those currently sitting on the federal death row, are African American. Perhaps more disturbing is the fact that nobody at the Department of Justice can conclusively say that race is not a factor in determining which defendants are to be tried in federal death penalty cases.

According to the DoJ's own figures, 48% of the defendants in federal cases in which the death penalty was sought between 2001 and 2006 were African Americans⁵.

What we don't know, unfortunately, is whether or not this number is representative of the number of criminal defendants who are accused of crimes in which the death penalty may be sought. And, since there are several layers that must be examined to even begin to assess this number, including whether a crime is tried at the local or federal level, it is not an easy number to attain.

What is clear, though, is that at several different points in the process of determining who is tried in a federal death penalty case and who is not, a judgment is made by human beings in a process in which not everyone has similar views. And in a world in which 98% of the chief district attorneys in death penalty states are white and only 1 % are black⁶, it is this differential that gives us the most problem.

In addition to the factor of the race of the defendants, the NAACP is also deeply troubled by the role played in the race of the victim. Although at the federal level the weight of the victim's race appears to have changed over the last few years⁷, at the state level the race of the victim still appears to play a big role. According to the Death Penalty Information Center, 79% of the murder victims in cases resulting in an execution were white, even though nationally only 50% of murder victims overall were white⁸. A recent study in California found that those who killed whites were over 3 times more likely to be sentenced to death than those who killed African Americans and more than 4 times more likely than those who killed Latinos⁹. Another study in North Carolina found that the odds of receiving a death sentence rose by 3.5 times among defendants whose victims were white¹⁰.

These studies, along with the fluctuations we see in all death penalty jurisdictions including the federal government, speak again to the varying factors involved in determining who is eligible for the death penalty and who is not. The overwhelming evidence that a defendant is more likely

to be executed if the victim is white is also incredibly problematic; it sends a message that in our criminal justice system, white lives are more valuable than those of racial or ethnic minorities.

Obviously with race being so problematic and such an overwhelming factor in the application of the death penalty, the NAACP is also concerned that there be no room for error. Yet errors do occur, even today. Nationally, more than 120 people have been exonerated and freed from death row before they could be executed". Given the finality of the death sentence under which these people were living, they may in fact be considered the "lucky ones". Furthermore, considering the disparities in the number of African Americans on death row, it is likely that more African Americans are falsely executed, a fact that once again contributes to the mistrust that is endemic among the African American community of the American criminal justice system.

There are several other very valid arguments against the death penalty that I will mention but shall not elaborate on here. The death penalty is not a cost effective punishment; a 2005 study showed that in California, taxpayers paid \$114 million per year beyond the costs of keeping convicts locked up for life; taxpayers have paid more than \$250 million for each of the state's executions.¹²

The death penalty is not a deterrent; according to the 2004 FBI Uniform Crime Report the southern United States had the highest murder rate, despite the fact that 80% of all executions are in the South.

Yet to the NAACP, the biggest argument against the death penalty is that it is handed out in a biased, racially disparate manner. Race matters, whether it be the race of the defendant or the race of the victim. And until it can be proven that race is not a factor in determining who is executed, Americans' faith in the criminal justice system, especially the confidence among African American communities, will continue to be dismal.

This mistrust is detrimental to not only our communities, but to our Nation as a whole: Law enforcement executives and the rank and file officers agree that crimes cannot be prevented or solved without a basic community trust of the police.

And so let me end where I began, by thanking Senator Feingold for all you have done to enact a moratorium on the death penalty. The NAACP both supports and appreciates your efforts, and we look forward to working with you to see that someday we are successful.

1 US Census Bureau, State & County Quick Facts, 2007

2 Death Penalty Information Center, Facts About the Death Penalty, June 19,2007

3 Ibid

4 Ibid

5 U.S. Department of Justice, Responses to oversight questions from Senator Feingold, June, 2007

6 Death Penalty Information Center, Facts About the Death Penalty, June 19,2007

7 U.S. Department of Justice, Responses to oversight questions from Senator Feingold, June, 2007

8 Death Penalty Information Center, Facts About the Death Penalty, June 19,2007

9 Pierce & Radelet, Santa Clara Law Review, 2005

10 Prof. Jack Boger and Dr. Isaac Unah, University of North Carolina, 200 1

11 Death Penalty Information Center, Facts About the Death Penalty, June 19,2007

12 Los Angeles Times, March 6,2005