



International Monterrey Model United Nations Simulation

American School Foundation of Monterrey



United States Senate

Topic: Addressing racially-motivated inequalities present in the death-penalty system

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I. Committee Background

The Senate of the United States (US) is the heart of the legislative branch of the American government. It acts as the upper chamber of Congress, while the House of Representatives acts as the lower chamber. Every act and bill passes through Congress before it goes on towards the President of the US for approval, or veto. Senators are familiar with having a heavy influence in the government. They play a vital role through the debates and decisions the country faces every day. First coming together in 1789, the US Senate was built to be a more elaborate and sophisticated version of the House. Having fewer members in the chamber helps with the bigger sense of community and unity between its members, while granting these very senators a tenure of six years in order to better discuss the issues that pertain to the nation. The Senate underwent significant modifications of procedure during Wilson's presidency, some of which provided for the election of senators by vote, instead of an appointment by the state legislatures. The title of Senate Majority Leader was also created, he or she would be the person that would guide each party through debate. The leader would be a person of seniority and great eloquence. Delegates will have the opportunity to work with peers across the aisle, hopefully supporting bipartisan agreements that will prevail and transcend beyond us. You will participate in debates on the most pressing issues that are facing the nation, trying to balance what your senator believes in, and what one has to compromise to let matters move forward in a democratic way.

II. Introduction

Description and Definition of the Topic

The issues of systematic racism and racially motivated prejudices have always been present in the justice system. However, as this topic obtains greater mainstream attention, there is one facet has been widely ignored: racially motivated inequalities existent in the death penalty system. As of present day, the death penalty, also known as capital punishment, is "currently authorized in 27 states, by the federal government and the US military" (McInnes & Widgery, 2021). Capital punishment is often reserved for and administered to those who have committed severe crimes; and viewed as a last resource for the most unforgivable offenses. Yet, the death penalty system is not flawless: it has a long, striking history of racial disparity. Black Americans,

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especially those who have committed a crime against a white victim, tend to be more brutally judged than their caucasian counterparts. The rates of execution according to race demonstrate such disparity: as of October 2002, “12 people have been executed where the defendant was white and the murder victim black, compared with 178 black defendants executed for murders with white victims”, and over 80% of all capital punishment cases involve white victims (McInnes & Widgery, 2021).

The Problem

Race has always played an imperative role in the determination of a defendant’s fate, the color of their skin and that of their victims decides who lives and who dies during a trial. Looking at rape cases, “89 percent of executions involved black defendants” who had allegedly raped white women (Race n.d.). The consensus seems to be that there exists a racial bias in the criminal justice system, which has been seen present among law enforcement officers, witnesses, jurors, and other members of the justice system, that allows for the harsher punishment of minorities to persist to this day. The current problems compromise the criminal justice system and send a message that some lives, based on skin color, are worth more than others.

In addition, killers of white people are more likely to face the death penalty than those who murdered Black Americans. The death penalty was reinstated in the US in 1977; since then, “295 Black defendants were executed for killing a white victim, but only 21 white defendants were executed for the killing of a Black victim” (Long, 2020). However, it is usually Black Americans who are the victims of the crime, even if the numbers do not indicate it. Although the death sentence has become rarer, the astonishing racial disparity continues to increase. After the reinstallation of the death penalty, of the prisoners on death row 46% were Black, and from “January 2009 through December 2018, that percentage grew to 60%” (Racial Disparities Are ... Declines 2019). Furthermore, the death penalty presents inequalities in how unpredictable it is. The Intercept, a non-profit news organization, compiled a report that demonstrated that since 1977, one third of the death penalty cases became resentenced, indicating that the “death penalty prosecutions were flawed in some way that required re-adjudication” (Racial Disparities Are ... Declines 2019). Such exhibits the number of wrongful convictions in the US, with Black Americans being seven times more likely of being wrongfully accused of murder than White people, as demonstrated by the National Report of Exonerations (8 Facts You ... System 2021). Although half of the 2,725 citizens exonerated since 1989 were Black Americans, according to Colleen Long in an article for Associated Press, in 2019 “52% of the death row inmates were Black” (Long, 2020). Moreover, police officers have a distinct role in the racial bias presented in the death penalty because “cases of Black Americans exonerated from wrongful murder convictions were 22% more likely to involve police misconduct than similar cases involving

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white defendants” (8 Facts You ... System 2021). Also, studies have demonstrated that Black and Latino's are more likely to be stopped and searched by the police, making them increasingly vulnerable to being incarcerated (8 Facts You ... System 2021).

III. History of the Topic

Chronological History of the Topic

The death penalty has existed in the United States since colonial times. Since the beginning, its history has been largely intertwined with slavery, segregation, and racial bias. Britain in particular influenced the United States' use of the death penalty more than any other country. When European settlers arrived in America, they brought the practice of capital punishment with them. As it stands, the first recorded execution in America was that of Captain George Kendall in the Jamestown colony of Virginia in 1608 (Dwankowski, 2018). Later in 1612, Virginia Governor, Sir Thomas Dale, enacted the Divine, Moral, and Martial Laws. These laws subjected the death penalty for even minor offenses such as blaspheming religion and trading with Indians (Martial Law at Jamestown 2015).

Fast forwarding a couple of centuries, in October 1978, Warren McCleskey, a Black man, was sentenced to death for allegedly killing a white police officer during a robbery. In defense, McCleskey's lawyers argued that Georgia's capital punishment system was racially biased in violation of the Eighth and Fourteenth Amendments, both of which generally serve to give equal protection to prisoners and detainees. In support of their argument, the lawyers presented statistical evidence that race significantly impacted the likelihood of a death sentence (Madeo, n.d.). Used as evidence in the court, University of Iowa professor, David Baldus, conducted a statistical analysis of more than 2,000 murder cases. He found that prosecutors were more likely to seek the death penalty, and juries were more likely to impose it in cases involving Black defendants and white victims (Madeo, n.d.). Even after controlling for crime-specific variables, the study concluded Black defendants accused of killing white victims faced the highest likelihood of receiving the death penalty. The Court accepted the Baldus Study findings as valid but declared that there was insufficient evidence to reverse the conviction and sentence because there was no proof that any individual had intentionally discriminated against McCleskey based on race. In other words, without clear evidence that the discrimination was impactful and purposeful, the Court would not act. In dissent, Justice William Brennan wrote that the majority was motivated to deny relief by a “fear of too much justice” (Madeo, n.d.). Ultimately, on April 22, 1987, the US Supreme Court rejected McCleskey's death penalty appeal and instead accepted proven racial sentencing disparities as “an inevitable part of our criminal justice system” (Madeo, n.d.). The Court's ruling upheld the constitutionality of racially biased capital

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punishment in America and remains the law today. The US has executed more than 1,200 people since 1987, including Warren McCleskey, who died in the electric chair on September 26, 1991 (Madeo, n.d.). Evidently, McCleskey's case was negatively impacted by the racial bias in the death penalty system, and the justice system as a whole.

The commencement of banning the Death Penalty began with Michigan in 1847, and a couple other states followed along. However, there was a large trend from the years 1957 through 1972 where Capital Punishment was abolished by several more. This revival of questioning governmental ideas came to spark the case of *Furman v. Georgia* on June 29, 1972. In this situation, the Supreme Court declared death penalty laws unconstitutional since they violated the Eighth Amendment. Over 600 death sentences were overturned (Death Penalty 2021). During the 1980s, Georgia found that their prosecutors “sought for the penalty for 70% of lack defendants with white victims, but for only 15% of white defendants with black victims” (Race and the Death Penalty n.d.). The court began to recognize the discrimination pointed toward minorities; including how abusive power withheld by the rich majorities severely impacted the other part of the population. Even so, this decision did not last for long; the *Gregg v. Georgia* case revised the past case and settled that the purpose of such penalties followed procedure to retaliate against sizable offenses and keep the people safe. One year later, in 1977, it was decided that the penalty would be proportionally compared to the criminal's offense. The court cautiously investigated the gravity of the illegal action, how other criminals are punished in comparison, and what consequences other jurisdictions have historically set on the exact action taken (McInnes & Widgery, 2021). In most cases, the votes have been incredibly close. This demonstrates the controversy of what constitutional rights imply and how they should affect the people. Even so, many fall blind to staggering data that highlights the abuse of power taken shown through harsher consequences towards the people of a lower class and different race, while sparing the rest due to instituted bias.

Out of the 50 states, 23 have abolished the Death Penalty, while 27 have maintained it in their justice system. Over time, the situation has greatly impacted the ideals spread in the US. Many criticize its hypocritical views with the promise of ‘liberty and justice for all’, while reinforcing discrimination in the justice system (Race and the Death Penalty n.d.). This is clear since the system kills many who did not deserve lethal consequences for their actions according to US law. As a result, the underlying difference between criminals who are punished too harshly and those who get away with their crimes, which is completely driven by prejudice, is repressed. The year 2015 marked the initiation of 66 laws to regulate the issue, limiting the flexibility of judgment that sets minorities at a disadvantage. Some states transitioned to only forms of lethal injection to end the criminals' lives, which has also become a topic of discussion to analyze

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whether or not the form of death affects the penalty's moral validity (Race and the Death Penalty n.d.).

Currently, on October 11, 2018, the Washington Supreme Court wrote that the “death penalty is invalid because it is imposed in an arbitrary and racially biased manner”, acknowledging that the continuation of such violates Article I, Section 14 of the Constitution (State by State n.d.). Thus, Capital Punishment does not resolve legitimacy in its penalty; instead, it keeps minorities at a dangerous social point without fair representation. Moreover, Black Americans have faced 43% of executions starting from 1976, while 55% of these people are still awaiting their consequential death (Race and the Death Penalty n.d.). These statistics are critically inequivalent with the whole Black population in the United States; thus, progression and regression come hand-in-hand.

Historical Case Studies

The Case of Robert Miller

On September 3, 1986, 83-year-old Anna Laura Fowler was found raped and murdered in her apartment in Oklahoma City. Two months later, Zelma Cutler, 93 years old, was also found raped and murdered in a nearby apartment (Possley, 2021). Police collected blood, semen, and hair samples from both murder scenes; when tested, they believed they found a genetic marker from the human immune system that was more common amongst Black Americans. The police used this report to suggest that the perpetrator was most likely Black, which is why they canvased a neighborhood and tested Black men to find the offender. Robert Lee Miller, a local known to the police, was tested and found to have the same genetic marker that the sample had. Police brought him back for questioning, and after a long 12-hour session that was secretly being recorded, Miller implicated himself in the crime. In court, the prosecutor relied on the “admission of guilt” and the DNA evidence. During the trial, the prosecution displayed many of the instances where Miller implicated and heavily implied that the DNA evidence was an admission of guilt in itself. In 1998, Miller was convicted for both murders and rapes—the judge sentenced him to the death penalty (*Robert Miller* 2019). However, years later, forensic scientists discovered that the person who conducted the DNA tests, Joyce Gilchrist, had been giving false testimonies in dozens of cases. The Oklahoma City Police Department crime eventually fired her for misconduct, and the DNA evidence was re-tested. From 1992 to 1994 the samples provided—hair, semen, and blood—were re-tested and did not match that of Miller's (*Robert Miller* 2019). The state granted Miller a retrial in 1995 due to the lack of evidence. During this trail, Miller was acquitted based on faulty DNA evidence. Miller spent seven years on death row and almost ten years imprisoned for a crime he did not commit on faulty evidence that was not even tested. The false confession of a researcher caused this failure in the justice system to occur.

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Had the evidence been tested by more than one person, it would have been discovered that it did not match Mr. Miller’s DNA, and he would have never been sentenced to death (*Robert Lee Miller Jr.* n.d.).

The Case of Henry McCollum and Leon Brown

In 1983, Henry McCollum and his half-brother, Leon Brown, were wrongfully convicted of the rape and murder of Sabrina Buie in Red Springs, North Carolina (Jenkins & Maler, 2015). The accused were forced to sign confessions—written by the police—admitting to the murders and consequently were sentenced to death. At the time of the arrest, McCollum and Brown were 19 and 15 years old. In addition, court recordings proved that both are “intellectually disabled with limited abilities to read or write” (Jenkins & Maler, 2015). Their young age and intellectual impediments indicated their inability to defend themselves, making them easy targets for the police to manipulate—demonstrated in the police’s coercion to sign the admission of guilt. However, in 2014, DNA evidence linked the murder of Buie to Roscoe Artis, and the siblings were released; North Carolina Governor Pat McCrory granted pardons following a “ninth-month review” (Jenkins & Maler, 2015). Even so, with 31 years in prison, McCollum had become North Carolina’s most lasting death-row inmate, while Brown had become the youngest person on North Carolina’s death row. Nevertheless, on May 14, 2021, Judge Antonin Scalia awarded McCollum and Brown 75 million dollars: 31 million dollars for each year spent in prison, and 13 million dollars in punitive damages, as compensation for the police misconduct during their conviction. Such involved the coercion for the confession and the evidence police fabricated while suppressing key evidence, including McCollum’s and Browns’ DNA missing from the scene of the crime. After the jury’s decision to grant them the compensation money, Elliot Abrams, the attorney for the brothers, expressed that “the first jury to hear all of the evidence—including the wrongly suppressed evidence—found Henry and Leon to be innocent, found them to have been demonstrably and excruciatingly wronged” (*North Carolina Jury ... Convictions* 2021). Henry and Leon’s wrongful conviction illustrates the flaws with the police and their involvement in wrongful convictions cases. While they were released from prison and reimbursed, hundreds of Black Americans remain sentenced to death—most for crimes they did not commit.

The Case of Robin ‘Rocky’ Myers

In 1991, Ludie Mae Tucker, a resident of Alabama, was stabbed and murdered in her own home. Key witnesses made multiple testimonies including the color of the convict’s shirt being light and specific traits that pointed towards Anthony “Cool Breeze” Ballentine as responsible. When informed of a reward offered in exchange for more information about the case, a friend of

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“Cool Breeze” targeted Ludie’s neighbor, a black man named Rocky Myers, as the murderer (*Save Rocky From ... Execution* 2021). Rocky had a difficult life: he was diagnosed with an intellectual disability at the age of eleven and he could only read at a third-grade level (*Rocky Myers* 2021). He was convicted of capital murder although his history was clear of any violence and no forensic evidence was found to prove he was guilty (*Save Rocky From ... Execution* 2021). The jury contained eleven white jurors out of twelve, including one who used racist slurs to describe Rocky (*Rocky Myers* 2021). Despite the jury recommending ‘Life Without the Possibility of Parole’, the elected Judge exercised the power of judicial override and sentenced Rocky to death. He claimed the jury had been too ‘emotional’ in choosing not to elect his consequence (*Alabama’s Death Penalty* 2021). Many speculate that this was due to his upcoming election, trying to show the people of Alabama he was ‘tough on crime’ to get more votes. There was apparent ignorance toward the lack of evidence in the case: unidentified handprints that did not match Rocky’s, “Cool Breeze” being witnessed having a white shirt with blood stains while Rocky was wearing dark clothing, Ludie knowing Rocky but failing to recognize the face of her intruder, and no skin cells left on the scene when Rocky dealt with severe eczema (*Save Rocky From ... Execution* 2021). The justice system of Alabama was one of only three states that withheld judicial override as a sufficient reason to condemn a suspect to capital punishment. Yet, this has already changed; in 2016, the Supreme Court ruled Florida’s acceptance of judicial override as unconstitutional, and Delaware followed suit, leaving Alabama to end this practice by 2017 (*Alabama’s Death Penalty* 2021). Even so, Rocky remains on death row with no access to a lawyer that can help him get out; the system has failed him because of his race and disability.

The Case of Dennis Williams

In 1978 Illinois, a young woman and her fiance were abducted; the woman was raped, and both were murdered. A Black American, Dennis Williams, and his friends, and later co-defendants, Kenneth Adams and Willie Rainge were residents of the same neighborhood where the couple was found. Paula Gray, the state’s chief witness for the case, claimed to have seen the men at the scene of the crime; her testimony then secured indictments of all three men (*Dennis Williams* 2019). Later in the trial, the state presented eyewitness testimony placing Williams and his friends at the scene and time of the crime. A state expert improperly testified that a hair found in Williams’ car microscopically ‘matched’ William’s hair; yet, the men’s lawyer, Archie Weston, failed to challenge the evidence even though hair comparison can never prove a reliable match. An incorrect serology testimony was also present in the case. Williams and his friends were convicted; Addams received a 75-year sentence, Rainge a life sentence, and Williams got sent to death row (*Dennis Williams* 2019). Williams’ previous lawyer for the case, Archie Weston, later admitted in a hearing for a different case that he was stressed out and could

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not think straight during Williams' original trial. Nothing changed until 1996 when a group of journalism students took up the case. These students found a witness, who shortly after the crime, had tipped the police to the identity of the real killers; yet, the police never investigated the tip. The investigating team also found two of the three men responsible for the crime—both confessed and DNA testing proved they were guilty. After the confessions, Dennis Williams was released in 1996 after spending over 17 years in prison and with death row dangling over his head (*Dennis Williams* 2019). His name was cleared through the diligent investigation of the journalism students. Dennis' wrongful conviction and death-row sentence highlight the injustice in the criminal justice system; he never deserved to be sentenced. Even though he was eventually released, numerous unjustifiably convicted Black Americans receive the same treatment, and remain on death row until the time of their execution.

The Case of Pervis Payne

In June of 1987, Mr. Pervis Payne was waiting for his girlfriend to return to her apartment in Millington, Tennessee. After hearing screams and strange noises coming from the apartment across the hall, he walked over to investigate the source of the noise. He then discovered that Charisse Christopher, his girlfriend's neighbor, and her two children had been brutally attacked. Ms. Christopher and one of her daughters, Lacie Jo, both succumbed to their wounds. Payne—along with other witnesses—said they saw a man leaving the crime scene shortly before Payne arrived, with Payne stating that this man rushed right by him when he was entering the apartment complex (Steele, 2021). When the police arrived, Payne was covered in blood because he tried to help the victims; fearing that he would be confused for the attacker, he fled the scene. Police later caught him, and he was put on trial. New investigations into the case have found multiple discrepancies and errors. One of the main discrepancies is that accumulated evidence that could help identify the perpetrator—such as the victim's fingernail clippings—had gone missing. These clippings were particularly crucial, as the prosecution argued at trial that the victim had scratched her attacker. This evidence went untested for many years—and when it did, they identified male DNA from an unknown third party (*8 Things You ... Payne* 2020). Mr. Payne's lawyer presented the information to the court, but the DNA was too degraded to be able to identify an alternate suspect. After this occurrence, the fingernail clippings went missing, with the state still being unable to account for their whereabouts. The prosecution even used racial stereotypes and tropes to portray Mr. Payne as a hypersexual, drug-abusing, Black American who attacked and killed a white woman. It is also important to note that Payne was declared intellectually disabled; because of his disability, he was not able to fully participate in his defense, and was not a strong witness. Mr. Payne's disability was not once recognized during the trial; which implicates that the execution is unconstitutional seeing that the state of Tennessee

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has a law protecting intellectually disabled people from the death penalty—categorically barring all those with intellectual impediments from receiving it (*8 Things You ... Payne* 2020). Yet, to this day, Mr. Payne remains on death row. The prosecutor—who has a history of professional misconduct—even went as far as to juxtapose the victim’s white skin with Payne’s dark hand (Steele, 2021). Destruction of evidence, Mr Payne's intellectual impairment, and a racially motivated prosecution are all clear indicators that Pervis Payne was convicted for a crime that everyone knows he did not commit. Like many other Black Americans, he was sentenced due to the color of his skin.

Past UN Actions

Having described capital punishment as an “inherently flawed” and an “abhorrent practice”, the United Nations (UN) human rights experts have urged President Joe Biden to take action and abolish the death penalty in the US (*UN Human Rights ... Penalty* 2021). On March 11, 2021 the Office of the UN High Commissioner on Human Rights issued a statement in Geneva, Switzerland, saying that the death penalty “serves no deterrent value and cannot be reconciled with the right to life” (*UN Human Rights ... Penalty* 2021). In a press release, the High Commissioner’s office criticized the US, calling on President Biden to “urgently grant clemency to the 48 individuals currently on death row for federal crimes”. This essentially means giving the individuals a second chance. They also urged the President, as well as members of Congress, “to strongly support legislative efforts to formally abolish the death penalty at federal level” (*UN Human Rights ... Penalty* 2021). This would mean a severe decrease in the overall use of the death penalty.

Furthermore, on October 10, 2017, the UN marked the World Day Against the Death Penalty by issuing a statement; the declaration called for urgent action to abolish the death penalty, and was delivered by the United Nations Human Rights experts, including: Agnes Callamard, special rapporteur on extrajudicial, summary or arbitrary executions, Felipe González Morales, special rapporteur, on the human rights of migrants, Philip Alston, special rapporteur on extreme poverty, and Mutuma Ruteere, special rapporteur on racism (*Death penalty disproportionately ... warn* 2017). These experts defined reasons explaining why people from poor communities are “being sentenced to death” with more conviction than people who “are rich” (*Death penalty disproportionately ... warn* 2017). These reasons included being easy targets for the police, having no access to legal assistance, and not being able to afford bail. Most importantly, the UN noted the bias towards groups in society, distinguishable those “of African descent” and explained how poverty presents a greater issue when coming from these groups that are often “discriminated against” (*Death penalty disproportionately ... warn* 2017). Evidently, this demonstrated the relation between death row inmates and their race and economical status.

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Consequently, the experts “applauded [...] countries that have abolished the death penalty”, clearly displaying their position on the death penalty and recognizing that “global effort towards its progressive abolition must continue to grow” (*Death penalty disproportionately ... warn* 2017).

Recently, on November 9, 2020 the world community condemned the United States’ use of the death penalty during the UN Human Rights Council Universal Periodic Review of the United States’ human rights record. These reviews—which occur every five years for each country—provide a forum for UN members to analyze a country's human rights and ensure the protection of their citizens. Several US allies’, including France, Austria, Switzerland, Australia and Germany, called for the abolishment of the death penalty. These nations encouraged the American government to “take steps towards abolishing the death penalty altogether” as well as to “halt federal executions” (*U.S. Death Penalty ... Review* 2020).

IV. Key Players and Points of View

Senator Mitch McConnell

Senator Mitch McConnell is the minority leader for the Republican party in the senate. His stance on the death penalty has remained the same throughout his career as a politician; he has made it clear that he “embraces the death penalty” as an appropriate response for different crimes (Pendleton, 2018). In 1993, McConnell voted against an amendment that would replace the death penalty for a life sentence with no parole. However, during another crucial vote in 1993, McConnell voted in favor of removing the death penalty as a punishment for minors at a federal level. Unfortunately, the senate tabled the bill and since then has not reconsidered it (*Mitch McConnell, Jr.'s ... Penalty* 2021). McConnell’s position on the death penalty was reinforced after the 2018 Louisville Kroger shooting where a white man shot and killed a Black man and woman. During this time, McConnell also strongly advocated for the death of the Pittsburgh synagogue shooter who killed 11 people (Novelly, 2018). He strongly favours the death penalty in public platforms for large shootings or hate crimes. Senator McConnell’s thoughts on the death penalty will likely not change during his term in the senate as he strongly advocates for the use of this deadly punishment.

Senator Elizabeth Warren

Elizabeth Warren, a Democratic senator from Massachusetts, has constantly spoken up about the injustices the death penalty brings. Warren especially mentions the dramatic increase of capital punishment deaths that occurred with the Trump’s presidency; mentioning that before this change of executive leadership, “the federal government had not executed a federal prisoner

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since 2003 and [had] only executed three people in the previous [fifty] years” (Warren, 2020). Additionally, Warren believes that the death penalty presents a racial bias that undoubtedly places Black American citizens at a severe disadvantage when facing the stages of prosecution. She claims that the US makes “mistakes that are racially tinged”, saying that they “can’t do that as a country” (Burns et al., 2019). Consequently, Warren has taken action intending to make the prison system more efficient for the country’s protection. On August 20, 2019, the senator tweeted the following: “The United States has the highest incarceration rate in the world--yet our harshly punitive system isn’t making our communities safer”, finally presenting her plan to improve structural changes in the criminal justice system (Krieg, 2019). With constant votes toward the advancement of respecting prisoners’ basic human rights, Warren has managed to make an impact while raising awareness to protect people of different backgrounds, including people of the LGBTQ+ community (Krieg, 2019). Furthermore, she advocates that the death penalty may also be seen as an ‘easy way out’; specifically when the convicts have a quick and painless end to their lives, without recognizing the mistakes that led them to their current state (Krieg, 2019). With this evidence, she acknowledges that the system remains flawed. Yet, Warren continuously looks for ways to avoid the murder of innocent victims due to racial prejudice.

Governor Gavin Newsom

The California Democratic governor, Gavin Newsom, has openly expressed his views on the death penalty; having previously spoken up about how systemic racism plays its part in capital punishment. Being firmly against it, he has suspended the death penalty in California—the state has not executed convicts since 2006. Newsom has made it clear that “the death penalty is now, and has always been, infected by racism” (Beam, 2020). He has also argued that systemic racism in the death penalty system in the US is “the result of the nation’s and the state’s history of racial terror and subjugation” that have been forever present in the country throughout its history (Schwebke, 2021). His statements were filed in a 177-page amicus brief—which serves to address policy issues and provide historical perspective—to the California Supreme Court. At the time, the court was hearing the appeal of Donte LaMont McDaniel, a Black American looking to set aside his death penalty verdict on the grounds that the death penalty is ‘infected by racism’ (Beam, 2020). In his amicus brief, Gov. Newsom argued that Mr. McDaniel, who had been on death row since 2009, should have his verdict overturned “due to racial bias in jury deliberations and sentencing decisions” (Schwebke, 2021). Newsom also mentioned that, in death penalty cases involving Black defendants and white victims, “white jurors are ‘much less receptive to mitigation’ than Black jurors”, meaning that white jurors tend to be less forgiving, and are harsher when handing out sentences to Black perpetrators (Beam, 2020). He argued that

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this is simply a system of systemic racism and that, historically, the death penalty has always been disproportionately applied “first, to enslaved Africans and African Americans, and, later, to free Black [Americans]” (Beam, 2020). Attempting to set a precedent for the rest of the country, Governor Newsom plans to present a death penalty repeal to Californian voters as soon as possible.

Senator Dick Durbin

United States Democratic Senate Majority Whip Dick Durbin, from Illinois, has worked with Congresswoman Ayanna Presley since July 2019—following the US Department of Justice’s decision to resume executions—towards “[re]introducing legislation” to end the death penalty’s “failed and unjust policy” (Durbin, 2021). As commented on his Twitter account Senator Durbin recognizes that the death penalty is “deeply flawed and disproportionately imposed on Black and Brown and low-income people in America” (Durbin, 2021). The senator added that “if [Americans] truly believe that all lives matter, and Black lives matter, and brown lives matter and the lives of poor people matter, it's time for [them] to make sure that [their] system of justice reflects that” (Summers, 2021). Consequently, the Federal Death Penalty Prohibition Act was re-introduced by Presley and Durbin in January 2021, following former President Donald Trump’s attempt to execute three prisoners in his final hours in office. The legislation called for the prohibition of “the use of the death penalty at the federal level, and require[d] re-sentencing of those currently on death row” (Pressley, 2021). The bill gained popularity amongst both chambers of Congress, with co-sponsors increasing from 18 in July 2019, to 78, to 90 by May 2021. Furthermore, recently added supporters included Republican Connecticut Representative Peter Meijer and Independent Senator Bernie Sanders. On July 1, 2021, Attorney General Merrick Garland halted federal executions while the Department of Justice reviewed its policies regarding the death penalty; meanwhile, 17 Democratic Senators, including Durbin, presented Garland a letter on August 9 insisting on barring federal prosecutors “from seeking the death penalty in any new or pending criminal cases” (Walsh, 2021). The letter highlighted Durbin’s alignment in ideals with the one of President Biden’s, stating they “are hopeful that the Administration will support this bill” (Walsh, 2021).

Senator Tom Cotton

The death penalty has been a de facto moratorium in Arkansas since 2003. In 2019, Arkansas Junior Senator Tom Cotton released a statement regarding President Trump and Attorney General Barr’s decision to resume the federal death penalty in the state for five murderers. “This announcement will end this misguided moratorium and align the federal capital-crimes process more closely with the policy of our state” (Cotton, 2019). Cotton believes

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that the ultimate punishment is warranted for the most heinous crimes. “Capital punishment can help bring closure for victims’ families, deter other would-be murderers, and express the moral outrage of our society for the most atrocious crimes”, he added (Cotton, 2019). Cotton has been clear in his beliefs, that even life in prison can be an insufficient punishment “Justice may be delayed, even for years, but it cannot be avoided” (Cotton, 2019). Cotton implied that the death penalty will prominently return in some way, preferably soon. Cotton welcomed Barr’s decision and has made it his mission to preserve law and order with the use of the death penalty.

V. Possible Solutions

Regarding this controversial case, multiple potential solutions can be reached. Some may claim the best way to end racial discrimination within the penalty would be to supply a truly fair trial, while others may suggest eliminating capital punishment from the system altogether. One thing is clear—federal law has passed multiple amendments to narrow the odds of unfairly sending an innocent person to their death, but this is not enough to protect all of the people regardless of their race (McInnes & Widgery, 2021). With laws including the exclusion of death for the mentally disabled, unintentional effects, as well as other groups of people, it should be expected to have judges that would follow constitutional ideals to provide justice, which is not always the case (McInnes & Widgery, 2021). Thus, it is necessary to implement a more diverse jury that would leave bias and prejudice aside to evaluate a criminal’s offense. This could be done through deeper background checks for impartiality, which could be the job of selected national leaders, such as members appointed by the judicial branch (*11 must-dos ... master* 2019). Finally, the unification of ideas throughout the country as a whole instead of separate states would reinforce the severity that is considered when sentencing the death penalty upon a convict. Legislative changes are also required regarding the death sentencing process as amendments to protect the people from racial bias would be reinforced and passed. The national change further limits potential racial bias that could murder an innocent being based on the color of their skin.

One of the simplest ways of solving the disparities present in the death penalty is to restrict the use of capital punishment as a whole and replace it with life without parole (Researcher: Racial Disparities ... Penalty 2018). A bill that replaces the death penalty would be hard to pass in the Senate; however, when looking at the high cost of people on death row, it could be a viable solution. The cost of death penalty cases is around three times more than other cases because the trials come in two parts and unless there is a unanimous decision, there must be another trial (*Death Penalty Cost* 2017). The cost of the death penalty trials far outweighs that of regular sentencing; however, it is also important to consider the implications of replacing death row with life sentences. For instance, death row inmates are maintained by the state until

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they face execution while life inmates are maintained by the state until their natural death; such tasks will have an economic toll on public resources. Likewise, with a slower rate of available space, prisons will become largely overcrowded requiring expansions or even entire new facilities.

Another possible solution might be the implementation of stricter laws in jury selection. These laws would ensure the actual representation of a community, which would include people of all races, increasing the chances of juries being more fair. Many times, prosecutors choose to exclude certain people from the jury due to race. Even though the constitution prohibits this type of behavior, courts are usually lax, and even if they are not, other court proceedings prevent claims or racial bias from being heard (*Racial Bias* n.d.). One of the biggest reasons this occurs is because of the death qualification, which excludes jurors that are against the death penalty when prosecutors are looking for that sentencing. Implementing a bill that would not require the death qualification a jury selection that represents the actual thoughts of the community could be chosen. If the senate is able to draft and pass a bill implementing stricter jury selection laws the racial bias in death penalty cases could be reduced (Cohen & Smith, 2008).

Another way to ensure that there is racial equity in the death penalty system is to instill a policy dictating that, when there is a case involving a Black defendant—especially one with a white victim—at least half of the jury must be composed of Black jurors and other people of color—hereby referred to as BIPOC; meaning ‘Black, Indigenous and people of color’. Racial bias plays a large part in capital punishment; the Montana Innocence Project found that “all-white juries convicted Black defendants 16 percent more often than white defendants” (*All-White Juries* 2020). Unfair rulings imparted by all-white juries can be observed in cases throughout history; and in many of these cases, the verdict ended up being erroneous. An all-white jury cannot be truly impartial towards a defendant of color, making the presence of BIPOC juries all the more important: “when at least one black person was on the jury, conviction rates for Black and White defendants were nearly identical” (*All-White Juries* 2020). Having a BIPOC juror turnover of at least one-half in cases involving people of color is crucial to ensure that the process of criminal justice is truly racially equitable.

VI. Current Status

Currently, the federal government and the US military have authorized the death penalty in only 27 states (McInnes & Widgery, 2021). In recent years, states like New Mexico, Illinois, Connecticut, Maryland, New Hampshire, Colorado, and Virginia have all legislatively abolished the death penalty, replacing it with a life sentence of imprisonment with no possibility for parole (McInnes & Widgery, 2021). This means that the convicted would have to spend their life in

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prison with no future exceptions. Additionally, courts in Washington and Delaware recently ruled that the states' capital punishment laws are unconstitutional, meaning that they are not under a political constitution. Surely states across the country will continue to debate its fairness, reliability and cost of implementation.

Even so, thirteen states that permit the death penalty and the US military have not performed executions in a decade. In 2019, 41% of death row inmates were Black prisoners; however, from 2000 to 2019, citizens on death row declined by 29%. In addition, in 2020 17 people were executed, “the fewest since 1991”, demonstrating the decrease in recurring to the Death Penalty as a punishment (Gramlich, 2021). Furthermore, the COVID-19 pandemic postponed several executions, allowing inmates time to review their cases. Prosecutors have pledged to avoid seeking the death penalty in cases involving murder, and the decrease of executions aligns with the country’s perspective towards the death penalty. In April 2020, the Pew Research Center conducted a study in which they discovered that six in ten Americans favor the death penalty. Yet, 56% believed “Black [Americans] are more likely than White people to be sentenced to death for committing similar crimes” (Gramlich, 2021). Evidently, the public opinion aligns to the statistics that illustrate the correlation between the amount of death penalty inmates and how many of those are from the Black community.

The urgency of imposing the penalty is decreasing exponentially; eighteen executions took place during the pandemic—a record-low decline (*The Death Penalty ... Report 2020*). For instance, Colorado became the twenty-second state to abolish the death penalty in 2020 (*The Death Penalty ... Report 2020*). Moreover, even the states that have supported capital punishment, such as Louisiana and Utah, have officially maintained execution-free for over ten years (*The Death Penalty ... Report 2020*). DPIC estimates that two-thirds or more states have not carried out an execution in the past decade. Thus, as the use of capital punishment decreases, the current steps of limiting racial bias within execution statements are by limiting the number of deaths as a whole. Racial bias, while unjust, is incredibly hard to eliminate—with this being the same reason that Black individuals and people of color are disproportionately applied to the death penalty. As a matter of fact, as of October 2002, “12 people have been executed where the defendant was white and the murder victim black, compared with 178 Black defendants executed for murders with white victims” (*Race and the Death Penalty* n.d.). Another study, conducted by the University of North Carolina, also found that defendants were three and a half times more likely to receive the death penalty if the victim was white, rather than black. Capital punishment has disproportionately affected Black Americans, which currently make up 55% of the total death row population—even though they only make up “roughly 14% of the United States population” (Tamir et al., 2021).

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The biases that stem these issues are hard to eliminate, as they are seeded in centuries of racism, slavery, and white superiority. The death penalty will likely not be abolished in the near future, but decreasing the racial injustices in the system is essential for the development of the United States. With death penalty cases costing over “1.26 million” dollars each, the burden falls on the taxpaying Americans (*Financial Facts About ... Penalty* n.d.). Regular people end up paying for the mistakes the justice system makes and continue to pay for these errors when appeal hearings are filed. The injustices the death penalty brings affects every American citizen and until they are amended, people will continue to suffer.

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