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Capital Punishment in the Military: Racial Disparity

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Abstract

Currently, there are seven former service members incarcerated at the United States Disciplinary Barracks (USDB) that are on death row. Executions have become more or less a matter of routine. Recent public opinion polls show a wide margin of support for the death penalty, while human rights advocates continue to speak out against state-sanctioned killing in the U.S., the only western industrialized country that continues to use the death penalty. Is there a racial disparity in the way capital punishment is administered among service members? Statistics indicate that African-Americans are far more likely to receive the death penalty than any other race.

Capital punishment is sometimes viewed as society's moral obligation to protect the safety and welfare of its citizens. Only, by putting criminals that threaten this safety and welfare to death can society ensure that convicted killers do not kill again. Second, those that favor capital punishment contend that society should support practices that will bring about the greatest balance of good over evil, and capital punishment is one such practice. In effect, capital punishment benefits society because it may deter violent crime. Finally, defenders of capital punishment argue that justice demands that those convicted of heinous crimes of murder are sentenced to death. Justice is essentially a matter of ensuring that everyone is treated equally. It is unjust when a criminal deliberately and wrongly inflicts greater losses on others than he or she has to bear. For several decades Americans have debated whether or not capital punishment is justifiable. The debate over capital punishment remains an ever-present dilemma. So is capital punishment a justifiable act? Does man have the right to "legally murder" another man?

Capital punishment is officially sanctioned by 38 of the 50 states in America. It is also sanctioned by the federal government and the military. Each state that practices capital punishment has different laws regarding its methods, age limits, and crimes which qualify. So what is the military's current stance on capital punishment?

In 1983, the Armed Forces Court of Appeals held that military capital sentencing procedures were unconstitutional for failing to require a finding of individualized aggravating circumstances. However, President Ronald Reagan signed an executive order in 1984 adopting detailed rules for capital courts-martial that reinstated capital punishment. Among the rules was a list of eleven specified factors that could evoke capital punishment for qualified defendants.

Under the Uniform Code of Military Justice (UCMJ), fifteen offenses can be punishable by death. Two of these crimes: desertion or disobeying a superior commissioned officer's orders only carry the death penalty only in time of war. So who decides whether a person is sentenced to death? In military capital cases, the convening authority led by a field grade commanding officer, decides whether or not to bring a case to a court martial. Once this is determined, the convening authority picks service members to serve as panel members. The accused may request that at least 1/3 of the panel consist of enlisted personnel. The panel must also consist of at least five members. In order for a service member to receive the death penalty, all courts-martial panel members must reach a unanimous agreement on four separate points.

Since 1916, the U.S. Army has executed 135 service people. During this period, 29 inmates have been executed at the USDB. The last to be executed on April 13, 1962, was PFC John A. Bennett. He was executed by hanging for the rape and attempted murder of an 11-year-old Austrian girl. However, the military has now adopted the use of lethal injection as the method for executions. It has been over 45 years since the military has carried out the death penalty on a service member. However, all this may change in the near future. Recently, several of the inmates on death row at the USDB have exhausted all their appeals.

Currently, there is a considerable racial disparity among inmates on the military's death row. Of those on the military death row today, five are African-American, one is a Pacific Islander, and only one is Caucasian. These figures indicate that 86 percent of inmates on death row are minorities. According to Dwight Sullivan, "While the number of service members under death sentence is fairly small, the racial disparity in military death penalty cases has been distressingly persistent. During World War II, African-Americans accounted for less than 10

percent of the Army. Yet, of the 70 Soldiers executed in Europe during the war, 55 [79%] were African-American. After President Truman ordered an end to the armed forces' segregation in 1948, this racial disparity actually increased. The military carried out 12 executions from 1954 until the most recent one in 1961. Eleven of the twelve executed service members executed were African-American."

In addition to the racial disparity among death row inmates, there is also racial disparity among victims. Each time an African American has been sent to the military's death row, the case has involved a white victim. Currently, all of the inmates on death row at the USDB were convicted for murdering one or more white victims. There are currently 450 inmates incarcerated at the USDB. Within that population, there are numerous offenders that have committed murder and rape; crimes worthy of the death penalty. In fact, over 20% of the inmate population has committed the same types of crimes as their counterparts on death row. So why does one man get sentenced to death and another doesn't? It's clear to see that the courts martial process is flawed. Members that have the power to determine whether a person lives or dies seem to bring their own prejudices, beliefs and values to the courtroom. With that in mind, there will always be a lack of consistency when passing judgment in a capital punishment case.

So now, we come to present day America. The USDB has received word that executions can be administered. The stage is now set to conduct an execution. The execution chamber is set up. The gurney has been cleaned and covered with fitted sheets. The intravenous bags are filled and the lines are prepped and ready to be infused. The lethal mix of specified chemicals has been mixed to prepare the lethal injection. The viewing area has been staged to allow family members of the victims to witness the execution of the convicted. Correctional specialists, medical

personnel, the clergy and selected personnel have been identified to play important roles in the execution process. What next?

The numbers clearly indicate that the next inmate to be executed will most likely be a minority of African-American descent. Although crimes of the same nature have been committed by service members of all races, it appears that the convening authorities in a capital punishment case tend to lean towards the death penalty when it comes to African-Americans. The statistics do not lie. In an effort to show fair and equitable treatment to all, the military justice system must be reviewed to curve this obvious trend of racial disparity.

References

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