and historical lens. This study seeks to augment the discussion of race and the death penalty through a socio-political analysis of both previous literature and current research. The units of analysis used in this study are the death penalty cases themselves. The study observes what affect the units of analysis have on the overall decision-making process of judges, juries, and the Supreme Court.

Methodology:
The methodology within this research is comprised of case studies and discourse analysis. This methodology gauges the relationship between the death penalty and race. Statistical data regarding race and death penalty cases bolster the discourse and historical analysis presented within this research. The units of analysis used in this study are the death penalty cases themselves. The study observes what affect the units of analysis have on the overall decision-making process of judges, juries, and the Supreme Court. The case studies and discourse analysis provide enough information to make an argument regarding the arbitrary application of the death penalty.

Racial Discrimination and the Death Penalty: An Analysis of the United States’ Judicial System

Abstract:
Racial discrimination plays a role in the administration of the death penalty. This research analyzes the history, and past scholarly research, of the death penalty. The purpose of this research is to understand the correlation between racial discrimination and the death penalty. This study includes a literature review regarding the different aspects of the death penalty and race. Following the literature review, an analysis is performed of both previous literature and current death penalty statistics that augment the discussion of the death penalty.

Introduction and Purpose of Study:
The United States has an extensive history of racial discrimination ranging from the overt discrimination of the Jim Crow era to the more ambiguous discrimination of modern times. Discrimination has permeated into the judicial system of the United States. The purpose of this study is to provide a view of race and the death penalty through a socio-political and historical lens. This study seeks to augment the discussion of possible future outcomes of the death penalty within the United States.

Literature Review:

Historical Underpinnings
Between 1882 and 1968, about 3,500 people were lynched and this continued into the 1960s. Ogbu argued that “lynching was an expression of racism and racial discrimination;” citing sociologist Garrie Myrdal, who suggested that “lynching was a tool used to maintain racial caste distinctions and to keep blacks in a position of subjugation” (Ogbu 2002, p. 22). To further expand his argument that lynching was a racist act, Ogbu attempts to connect this history with current death penalty patterns. Ogbu discusses the “recreational aspects” of lynching, comparing the lynching mobs with 3,500 journalists applying to “witness Timothy McVeigh’s execution” (Ogbu 2002, p. 22). Essentially, Ogbu argues that modern society still views these executions as recreational to a certain degree.

Marvin Wolfgang conducted the “first major empirical challenge to racial discrimination in the use of the death penalty in the United States” in the 1960s. In his study, Wolfgang was convinced of “rapping a 35 year old, unarmed white woman” in Arkansas in 1962 and sentenced to death (Maxwell v. Bishop). He challenged his death sentence by arguing that “certain Arkansas statutes...dealing with the crime of rape and the punishment imposed therefor have been applied unconstitutionally to Negro men convicted of raping white women...” (Maxwell v. Bishop). Wolfgang collected data on about “5000 rape convictions in Arkansas during the 1960’s” (McKee v. Kemp, 1987). This study had a far more narrow scope than the Baldus Study, as Phillips only analyzed one specific county and only those defendants who were indicted for capital murder. Phillips argued that while his study was narrow in scope and could not be generalized throughout the country, no death penalty study can be generalized throughout the country due to the vast differences among states and countries. His findings are interesting, as they do not fully focus on the race of the victim, but they also found that the race of the defendant is irrelevant.

The Baldus Study
David Baldus, Charles Polakoff, and George Woodworth conducted a large scale study entitled “Comparative Review of Death Sentences: An Empirical Study of the Georgia Experience.” This study discusses the significance of “comparative sentence review,” also known as “proportionality review,” which is a procedure by which the death sentence is consistent with the usual pattern of sentencing decisions in similar cases or is comparatively excessive” (Baldus et al. 1983 pp. 645).

Baldus and colleagues’ approach has been criticized. There is no consistent pattern of racial discrimination. The court’s amendment of the death penalty has become far less applicable in today’s society when analyzing historical context, recent studies, and court cases. The current death penalty system has not made much of an effort to mediate this issue decades ago.

Recent Scholarship
Scott Phillips conducted a study from 1992 to 1999, analyzing death penalty and race in Harris County, Texas. This county is “arguably the capital of capital punishment,” and Phillips examined “whether race influenced the District Attorney’s decision to pursue a death trial or the jury’s decision to impose a death sentence against adult defendants convicted for capital murder” (Phillips 2009 pp. 600). This study has a far more narrow scope than the Baldus Study, as Phillips only analyzed one specific county and only those defendants who were indicted for capital murder. Phillips argued that while his study was narrow in scope and could not be generalized throughout the country, no death penalty study can be generalized throughout the country due to the vast differences among states and countries. His findings are interesting, as they do not fully focus on the race of the victim, but they also found that the race of the defendant is irrelevant.

The court also stated that “at most, the Baldus study indicates a discrepancy that appears to correlate with race, but [the] discrepancy does not constitute a major systemic defect,” further illustrating that “the Baldus study does not demonstrate that Georgia’s capital sentencing system violates the Eighth Amendment” (McCleskey v. Kemp 491 US 279 (1987)).

Following this 4-3 decision, many scholars have analyzed the impact the Kemp decision has had on the legal system with regard to the discrimination and the death penalty. This decision parallels the court’s attitude in McFarland essentially stating that the 1983 Baldus study’s statistics, even if valid, could not be applied specifically to the case at hand. Justice Powell delivered the opinion, arguing that the question at hand is “whether a complex statistical study that indicates a risk that racial considerations enter into capital sentencing determinations proves that petitioner McCleskey’s capital sentence is unconstitutional under the Eighth or Fourteenth Amendment?” (McCleskey v. Kemp 491 US 279 (1987)).

Analysis:
The historical context and the work of previous scholars have shown that there is a correlation between race and the death penalty. One can see the discriminatory process in which the death penalty has become far less applicable in today’s society when analyzing historical context, recent studies, and court cases. The former Supreme Court Justices have historically argued that the arbitrary nature of this punishment is not in accordance with the Eighth Amendment.

Conclusions & Further Study:
Racial discrimination within the death penalty is a contentious subject that continues to be debated. With that being said, it would be interesting to analyze whether the Supreme Court would accept the legitimacy of statistical data and declare the punishment unconstitutional if a similar case to Kemp were to be introduced today. Further, scholars such as Phillips are studying race and the death penalty prompting other scholars to do the same. There is far more statistical data that must be accumulated in order to fully develop and understand the issue. However, it seems that the death penalty is being implemented in an arbitrary manner today, despite the fact that the Supreme Court attempted to mediate this issue decades ago.