

Case 5

Racial Justice Act

Marcus Reymond Robinson's death sentence has been changed to life in prison after a judge found racial bias played a significant role in jury selection at his trial 18 years ago. At Robinson's hearing, defense counsel introduced a statistical analysis of racial disparity in jury selection in North Carolina death penalty cases. The study indicated that, even after controlling for other variables, prosecutors removed African Americans as potential jurors significantly more often than they removed Caucasians.¹ The judge concluded that Robinson had shown "the persistent, pervasive, and distorting role of race in jury selection throughout North Carolina [at the time of the trial]." He further ruled that, "evidence, largely unrebutted by the state, requires relief in this case and should serve as a clear signal of the need for reform in the capital jury selection proceedings." Robinson was resentenced under North Carolina's controversial Racial Justice Act.²

Under the Racial Justice Act, a prisoner sentenced to death may argue that race was a significant factor leading to his death sentence in order to have his sentence commuted to life in prison without parole. Prisoners can prove bias in three different ways: (1) they can show that the death penalty was more likely when the defendant was a particular race; (2) they can show that the death penalty was more likely when the victim was a particular race; and (3) they can show that jury selection was tainted by racial bias. To make their argument, prisoners can use statistics showing racial disparity in sentencing within a county or district or even throughout the state. Almost all of North Carolina's death row inmates have filed claims pursuant the Act.

But not everyone in North Carolina has welcomed the new standards allowed by the Racial Justice Act. A bill has been introduced in the North Carolina legislature that some believe, if passed into law, would essentially negate the Racial Justice Act. The bill would require a defendant or inmate to introduce "smoking gun" evidence of racial bias—a prosecutor's racist comment or membership in a racist organization, for example—before statistical evidence would be admissible. It also limits the statistical evidence by allowing it only from the time period ten years before the crime was committed and two years after sentencing and only from the district or county where the crime was committed. Those who support the bill argue that it is simply a reform of the Act and that it prevents prosecutors from being unfairly labeled as racists. Those who oppose the bill, on the other hand, believe that allowing the introduction of statistical proof is necessary to expose the racial bias that is causing minorities to be disproportionately sentenced to death.³

© Association for Practical and Professional Ethics 2012

¹ Campbell Robertson, "Bias Law Used to Move a Man Off Death Row," *The New York Times*, April 20, 2012, http://www.nytimes.com/2012/04/21/us/north-carolina-law-used-to-set-aside-a-death-sentence.html?_r=2; see also Eyder Peralta, "In First Test For Racial Justice Act, Judge Commutes Man's Death Sentence," *National Public Radio*, April 20, 2012, <http://www.npr.org/blogs/thetwo-way/2012/04/20/151061036/in-first-test-for-racial-justice-act-judge-commutes-mans-death-sentence>.

² Sarah Preston, "Historic Racial Justice Act Faces Repeal," *American Civil Liberties Union*, June 14, 2012, <http://www.aclu.org/blog/capital-punishment-racial-justice/historic-racial-justice-act-faces-repeal>.

³ Craig Jarvis, "Senate Passes Re-Write of Racial Justice Act," *NewsObserver.com*, June 20, 2012, <http://www.newsobserver.com/2012/06/20/2149771/senate-passes-rewrite-of-racial.html>.