

**In Focus:**  
**Innovative Funding Collaborative Tackles the  
Death Penalty in the United States**

*Contributed by Martha Toll, Executive Director, Butler Family Fund  
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The North Carolina Racial Justice Act (RJA) -- which passed in August 2009 and allows capital defendants, for the first time, to use statistical evidence to show systemic bias in the death penalty -- shines a bright light on the long history of racial bias in America's criminal justice system. The RJA tells the story of what happens when funders come together to support human rights advocacy.



North Carolina has the country's sixth largest death row. Intensive human rights work has held off executions for more than five years and has reduced the State's annual death sentencing rates from an average in the high twenties in the 1990s to about three per year. Three African-American men have been exonerated from the state's death row. The passage of the Racial Justice Act is of great significance both inside and outside of North Carolina and is exemplary of the success of the funders collaborative.

Funders for Alternatives to the Death Penalty, an innovative funding collaborative, has long invested in North Carolina's death penalty reform efforts, including the RJA. National and state foundations worked in close coordination to ensure adequate funding for a coalition of murder victims' family members, clergy, death row exonerees, attorneys, organizers, researchers, and citizens. This broad-based coalition provided state legislators with such compelling information about racial discrimination in North Carolina's capital punishment system that they were moved to act.

The result -- the 2009 Racial Justice Act -- is a far-reaching law that allows everyone on North Carolina's death row, as well as every new defendant facing the death penalty in North Carolina, to present evidence, including statistics, of racial bias in their cases. The first of its kind, the law has garnered international attention, despite being contested every step of the way in the state's legislature and its courts.

The RJA gave everyone on death row about one year to file a challenge to their conviction based on race discrimination. In order to bring these challenges, extensive data collection and research was necessary. National and state foundations once again coordinated to support researchers at Michigan State University to collect this information, which has played a tremendous part in filing individual challenges, but also to understanding the larger picture.

The findings are stunning. In North Carolina qualified black potential jurors are excluded from juries by prosecutors twice more than that of white jurors, and the odds of getting the death penalty increase by more than two times if the victim is black.

The first evidentiary hearing under the RJA was recently completed in Fayetteville, North Carolina. A judge heard evidence of racial bias in jury selection in the case of Marcus Robinson. Defense attorneys relied on the Michigan State University study and educated the judge on the history of racial bias, implicit bias, and on how to avoid bias in the courtroom. On April 20, 2012, the judge ruled that Robinson's trial had, in fact, been tainted by racial bias and ordered him off of death row. The losing side will most probably appeal to the North Carolina Supreme Court, which will interpret the law in this "lead" case. Even so, it is clear that the RJA has opened a window and forced a conversation about racial bias in the state's criminal justice system. In addition, the law has tremendous potential to affect how juries are selected in the future.

The RJA has revealed that injustices continue to plague North Carolina's death penalty system. If other states had a Racial Justice Act, similar evidence would likely come out. Nevertheless, the RJA has been under siege. Last year the newly Republican controlled legislature passed a bill repealing the RJA, which Governor Beverly Purdue vetoed. The legislature was unable to override the veto, but a legislative committee was appointed to review the law to enact any changes the committee sees fit. The committee aims to submit a draft bill in the May 2012 legislative session.

The unique aspect of this funding collaborative is their successful endeavor to coalesce around a common goal and campaign, and align their funding while still being fully answerable to the internal requirements of their own institutions. Their strategies are achieving results, including not only the positive ruling in Marcus Robinson's case but also the recent repeal of the Connecticut death penalty law. Five states have now repealed their death penalties since the start of this campaign.

Their work, however, like all human rights funding work, is not without challenges. For one, there is never enough money to fund all of the groups that deserve funding, or to fund at the scale at which they would like to fund. There are times when institutional priorities have to outweigh group priorities. However, this funding collaborative addresses some of these challenges with both a pooled fund and individual institutional funding.

This human rights work in North Carolina dovetails with other anti-death penalty efforts that national and state foundations are supporting around the country. Some states have already repealed the death penalty; other states are working toward that end. Death sentences are falling because the public has begun to understand the profound flaws in the system. Foundations and individual donors are supporting research, litigation, coalition work, organizing, and advocacy around the country to work toward making the death penalty an ugly relic of the past. These grantmaking strategies are strengthening the movement to eventually end the death penalty in the United States.

**Resources for Funders:**

- Contact Funders for Alternatives to the Death Penalty: [dpfunding@gmail.com](mailto:dpfunding@gmail.com). (Members of FADP include Atlantic Philanthropies, Open Society Foundations, Fund for Nonviolence, Sheilah's Fund at Tides, and Butler Family Fund.)
- Read the study findings on [Racial Bias in Prosecutorial Charging Decisions and Jury Sentencing](#).
- Read the *New York Times* article, [Bias Law Used to Move a Man Off Death Row](#).

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