

*Berger**Hand-Delivered*~~Conference of District Attorneys~~

N O R T H — C A R O L I N A

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November 14, 2011

The Honorable Phil Berger  
2008 Legislative Building  
Senate  
North Carolina General Assembly  
Raleigh, NC 27601-2808

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Dear Senator Berger:

On behalf of North Carolina's 44 elected District Attorneys, I am asking your assistance in correcting poorly constructed legislation that is having unintended and deleterious consequences. The Racial Justice Act (RJA), passed in 2009, purports to protect murderers from racial bias. Let me assure you, it does not. This act simply allows complex statistical maneuvering to overrule a jury's decision, ignore the heinous acts of a murderer and ultimately put an end to the death penalty in our state. I am asking that you consider the information provided in this letter and move to amend RJA as soon as possible.

Since this bill passed, concerns expressed yet disregarded, by District Attorneys during the initial legislative debate have become reality. And now, if you do not address this issue quickly the criminal justice system will be saddled with litigation that will crush an already under-funded and overburdened system. Consider the impact:

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(1) Death row inmates, regardless of race, have taken advantage of RJA. Of the 158 inmates on death row, 156 have filed motions. Fifty-seven of these inmates are white, with many of their victims being white and many of the juries consisting of mostly white jurors. Yet, by manipulating statistics, they will prevail. While black defendants are claiming racial bias by the system, white defendants are claiming reverse bias as a result of the system's efforts to eliminate discrimination against black defendants. This was not the intent of RJA.

(2) The cost of this act is proving to be prohibitive and the burden is crippling our criminal justice system. Almost every district in our state is facing at least one of these motions, while many are burdened with multiple motions. District Attorneys are being forced to devote a ridiculous amount of time and resources to these convicted murderers' cases. In one pending motion, conservative estimates for just copying prosecution discovery range from \$35,000 to \$50,000. While District Attorneys bear the responsibility of responding to RJA, we have received no additional resources. That means there are fewer resources to prosecute murderers,

rapists and drug traffickers whose cases are now pending and who are sitting in jail. This was not the intent of RJA.

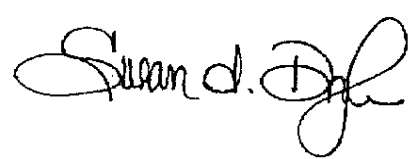
(3) The act creates a quagmire of litigation that requires the accumulation and distribution of over 20 years of homicide case files, easily numbering in the thousands. Thus far, the judge in one district litigating RJA has set a schedule for the discovery process that extends for 2 years before the actual hearing is ever reached. Additionally, statistical experts, being paid exorbitant fees, are being brought in from across the country to testify on a variety of statistical data, none of which relate to the convicted murderers' actions. This was not the intent of RJA.

(4) Proponents of RJA guarantee that none of these inmates will go free if they prevail on a claim. There is no guarantee. Inmates sentenced before October 1994 under Fair Sentencing, whose sentences were commuted to life in prison can be considered for parole after 20 years. There are at least 27 such inmates currently on death row. This means the courts could indeed release a number of these heinous offenders, whose victims' were promised they would never be released to threaten or re-offend. This was not the intent of RJA.

Do not allow North Carolina to continue this charade on its citizens, your constituents, with regards to the death penalty. In its current state, with RJA in place, we truly do not have a death penalty. District Attorneys are obligated by law to pursue litigation and defend the decisions of the judges and juries in our state. However, there is little we can do to prevent RJA from draining the scarce resources of our criminal justice system and possibly vacating death row.

As you approach the November legislative session, I implore you to reconsider this Act. At a time in our state when resources are scarce, it seems these resources should be devoted to more worthy endeavors like our children, schools or healthcare systems. Senate Bill 9 – No Discriminatory Purpose in the Death Penalty seeks to amend the RJA and bring it in line with the U.S. Supreme Court's ruling on the use of statistics in death penalty cases. Nothing about RJA fulfills the stated intent of the act. I challenge you see RJA for what it really is, not a search to eliminate racial bias, but a backdoor deal to end the death penalty in North Carolina.

Sincerely,



Susan I. Doyle  
District Attorney, Johnston County  
President, North Carolina Conference of District Attorneys.