

FOREWORD: CONVERSATIONS WITH THE COALITION THAT PASSED THE RACIAL JUSTICE ACT*

GENE NICHOL**

For odd and unrelated reasons, over the past year, I have spent some substantial time with two of the most remarkable statutes enacted in American history. The first is the famed Civil Rights Act of 1964.¹ Lots of folks did the same²—last year marking the sixtieth anniversary of the passage of what experts have reasonably deemed the “bill of the century.”³ No statutory enactment, by the United States Congress, or any other legislative assembly for that matter, has so profoundly altered the course of our national life as the Civil Rights Act signed by President Lyndon B. Johnson on July 2, 1964.⁴

The other law is certainly less noted, less facially successful, less permanent and durable, and far more geographically confined than the marvelous public accommodations law. The North Carolina Racial Justice Act⁵ was signed into law by Governor Beverly Perdue on August 11, 2009.⁶ It sought, breathtakingly, to end the ancient, seemingly invincible marriage between race and the death penalty in North Carolina.⁷ Its provisions and framework were

* © 2025 Gene Nichol.

** Distinguished Professor of Law, University of North Carolina School of Law.

1. Civil Rights Act of 1964, Pub. L. No. 88-352, 78 Stat. 241 (codified as amended at 42 U.S.C. §§ 2000a–2000h).

2. See Chapel Hill History, *Closing Remarks with Gene Nichol*, YOUTUBE, at 00:22 (July 2, 2024), https://www.youtube.com/watch?v=6wD6i_AZuW4 [<https://perma.cc/X9CF-VVJP>] (on file with the North Carolina Law Review) (Symposium on the Sixtieth Anniversary of the Civil Rights Act of 1964 presented by the Orange County Community Remembrance Coalition and the Chapel Hill Public Library’s Community History Program).

3. CLAY RISEN, *THE BILL OF THE CENTURY: THE EPIC BATTLE FOR THE CIVIL RIGHTS ACT* (2014).

4. *President Lyndon Johnson Signs the Civil Rights Act of 1964*, U.S. SENATE, https://www.senate.gov/artandhistory/history/common/image/CivilRightsAct1964_signing.htm [<https://perma.cc/C99E-TMCX>].

5. North Carolina Racial Justice Act, ch. 464, 2009 N.C. Sess. Laws 1213 (codified at N.C. GEN. STAT. §§ 15A-2010 to -2012), *repealed by* Act of June 13, 2013, ch. 154, sec. 5.(a), §§ 15A-2010 to -2012, 2013 N.C. Sess. Laws 368, 372.

6. Press Release, State of N.C., Off. of the Governor, Gov. Purdue Signs North Carolina Racial Justice Act (Aug. 11, 2009), <https://digital.ncdcr.gov/documents/detail/4574266> [<https://perma.cc/TCN7-78UB>].

7. § 1, 2009 N.C. Sess. Laws at 1214 (“No person shall be subject to or given a sentence of death or shall be executed pursuant to any judgment that was sought or obtained on the basis of race.”).

beyond pathbreaking. Its enforcement subsequently demonstrated the grotesque, surely continuing, impact of racial bias in the implementation of the death penalty in this purportedly progressive southern state. And the Racial Justice Act's ensuing history of attack, in both the North Carolina General Assembly and, now likely, its state supreme court, demonstrates an eventual fate less celebrated.

Still, the two exceptional statutes share much. Both seek, foundationally, to bring political communities into line with their long professed, and equally long transgressed, declared commitments and aspirations. Both demonstrate almost never before contemplated legislative ambition, as if lawmakers might—for once—seek to combat their society's greatest challenges. Both would require heroic steel and imagination from key legislators. Both efforts would be necessarily bolstered by massive, engaged activist communities outside the legislative halls. Both would be propelled by a widely shared sense that time for meaningful justice had arrived. Both could take solace in Dr. Martin Luther King's repeated demand, "Be true to what you said on paper."⁸ And, appropriately, both turn to shared legal mechanisms to make the promises of America real.

So, when the resourceful and talented leaders of the *North Carolina Law Review* asked me to modestly participate in an oral history project exploring the passage of the North Carolina Racial Justice Act, I was happy to sign on. Much less is known, of course, about our state's singular law of criminal justice racial reform than its nationally celebrated cousin. And the long-term impact of the Racial Justice Act in North Carolina decidedly remains in the balance. But these deficits argue only for greater exploration. So, I salute the project. I am immensely grateful for the efforts of Mia Thillet and Sam Scheipers, of the *Law Review*, for guiding me through the sessions. Most of all, I am honored to have been able to interview Ken Rose,⁹ Senator Floyd McKissick, Jr.,¹⁰ Charmaine Fuller Cooper,¹¹ and Representative Pricey Harrison.¹² Each one is a hero to me. Each was essential, absolutely requisite, to secure the Racial Justice Act's eventual enactment—often, of course, after years of determined, exhausting,

8. Martin Luther King, Jr., *I've Been to the Mountaintop at the Mason Temple, Memphis, Tennessee* (Apr. 3, 1968), <https://www.americanrhetoric.com/speeches/mlkivebeentothemountaintop.htm> [<https://perma.cc/GY5Z-DFPJ>] ("All we say to America is, 'Be true to what you said on paper.'").

9. Ken Rose & Gene Nichol, *Conversations with the Coalition that Passed the Racial Justice Act: Ken Rose Interview*, 103 N.C. L. REV. F. 200 (2025).

10. Floyd B. McKissick, Jr. & Gene Nichol, *Conversations with the Coalition that Passed the Racial Justice Act: Floyd B. McKissick, Jr. Interview*, 103 N.C. L. REV. F. 239 (2025).

11. Charmaine Fuller Cooper & Gene Nichol, *Conversations with the Coalition that Passed the Racial Justice Act: Charmaine Fuller Cooper Interview*, 103 N.C. L. REV. F. 272 (2025).

12. Pricey Harrison & Gene Nichol, *Conversations with the Coalition that Passed the Racial Justice Act: Pricey Harrison Interview*, 103 N.C. L. REV. F. 318 (2025).

2025]

FOREWORD

199

and demoralizing effort. The interviews demonstrate the complexities and steel required for the most important human rights work. They show, as well, that the hard labors of democracy must necessarily continue.