

Wilmington 10 Defense Attorney, James Ferguson, Supports Pardon

'Case illustrates a criminal justice system nightmare'

By Brian Stimson
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The National Newspaper Publisher's Association announced this week that it will be leading a push to formally pardon the Wilmington 10.

In 1972 in Wilmington, NC, 10 young people, nine of whom were Black, were convicted of arson and conspiracy after a trial bereft with recanting witnesses, a prosecution that withheld evidence and tampered with witnesses and jurors who were openly prejudiced against not only Blacks, but the very people they would be judging. The convictions were overturned in 1980, three years after Amnesty International declared the 10 to be political prisoners.

The attorney who defended the 1972 Wilmington 10 case, James Ferguson, II,

spoke with The Skanner News from his law offices in Charlotte, NC. Ferguson is an accomplished criminal defense and personal injury lawyer who has been recognized as one of the nation's "top ten litigators" by the National Law Journal.

The Skanner News: Do you see a value in a pardon of innocence, despite the fact that the convictions were thrown out by an appellate court in 1980?

James Ferguson, II: I always think there's a value in a pardon anytime you have a conviction under the circumstances like the Wilmington 10 and when you have court such as the Fourth Circuit that overturned that conviction because of prosecutorial misconduct and withholding evidence and the nature of the witnesses involved who had multiple recantations. So you never had a conviction that anyone can rely

upon. And a felony conviction affects a person for the rest of their life.

TSN: Do you think this is something that is politically feasible at this time in North Carolina?

JF: Well, who knows? You go for what's the right thing do whether it's politically feasible or not. The decision makers need the opportunity to consider the facts and when you have facts that point to an injustice that has taken place, and the injustice can still be addressed, I don't think the justice should be decided by political feasibility.

TSN: I lived in Durham, NC for several years in the 1990s when I was a youth. I know that even then, racial tensions in that city ran high.

JF: I'm sure they did. They have for years. I attended undergraduate school in Durham in the 1960s and they were high then. But sometimes results can be achieved when it appears unlikely they will be. I know that things are politically difficult, but I do feel that given the circumstances of this case, and with this being a period around the 40th anniversary of the case and with renewed attention, it's doable. Sometimes even in conservative circles you can get folks to look at the facts that point to an injustice.

TSN: Does this case stick out as one of great importance among all the cases you have represented?

JF: I think this case is symbolic of a transformative racial moment in the history of North Carolina and the nation and the world. In a number of ways it is because it's symbolic of what can happen when young people decide to speak out and stand their ground. This is related to school desegregation effort in Wilmington and certain African Americans in the community wanted to see the desegregation process be more sensitive to the African American students and their needs, they wanted equally spread on the community, and they wanted to take a stand and let the community know they wouldn't be intimidated by whites. When I talk about it being

an important racial moment in the history of North Carolina, one of the things that gets overlooked in this is that this case had worldwide implications. Amnesty International took the position that the Wilmington 10 were political prisoners of conscience in America. That case was the first time and I believe it may be the only time that AI determine that there were prisoners of conscience in the U.S. Around the time, I believe it was 1977, there were 14 political prisoners of conscience under Amnesty's criteria. It's significant that 13 of the 14 were North Carolinians. There was the Wilmington 10 and the Charlotte 3. So, the world wide attention that the case garnered, the international action, speaks to the significance that this case had. It was more than 13 young people being unjustly convicted.

TSN: Looking back on the case, is there anything that could have been done differently that could have affected the outcome of the case?

JF: That's a hard thing to say, considering the fact that among the jurors was at least one juror that stated in court that she was prejudice against Ben Chavis and stated that her son was in the National Guard and she was concerned for his safety, and had taken it upon herself to go down and look at the



scene, she was so concerned what had taken place ... but when asked the question by the judge, can you put all those feelings aside, then she answered yes. The judge let her sit. I don't know that the facts made much difference to her, I don't know that there was anything much that could have been done to change the outcome with her, and I suspect the others had same sentiments but weren't as vocal. So it's hard to second-guess.

TSN: Do you think there needs to be an investigation into the prosecutorial misconduct or the opinions of the judge at the time?

JF: Well, I hadn't really considered that at this time. I think a pardon of innocence would require some investigation into the case. I'm not sure what purpose would be served at this late date to investigate the prosecutorial misconduct.

TSN: How did this case affect you personally and professionally through the years?

JF: I came to this case fairly early in my career. I was four years out of law school when I came to this case. So this case was part of my development as a lawyer, my introduction to the many challenges of unjust prosecutions that arose. So I think I learned in this case just to what lengths prosecution would go to obtain a conviction. I learned we can't always rely on judi-

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cial impartiality we can hope for it but it's not always there. I learned not so much what impact the case had on me and my career, but the impact a criminal prosecution can have on the lives of young people. Bearing in mind that all of these young people, with the exception of two or three, were in high school. And their lives were devastated by this prosecution and this conviction. And even now, many of them are still affected by it. Some of them are deceased and their lives were lived under the cloud of this case even though the court ultimately overturned the conviction. So the criminal justice system is used as it was in this case, to suppress efforts of folks seeking to change their community, it's important to remember, just the conviction itself, not to mention the years spent behind bars is a terrible weight. I've seen our society become more and more over-criminalized and people don't think about the tremendous impact that a criminal conviction has on a person's life, particularly those that have been unjustly convicted. As we know now some of the things that have been uncovered by DNA, not in this case, but other cases, people come out having been unjustly convicted. As for me, it has made me always concerned about how the criminal justice system is too often misdirected with the way it is used. One time is too many times.

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