



# NATIONAL ALLIANCE AGAINST RACIST

AND POLITICAL REPRESSION

## ANALYSIS OF NORTH CAROLINA COURT OF APPEALS DECISION DENYING APPEAL OF THE WILMINGTON 10

At 8 o'clock in the evening on December 18, the North Carolina Court of Appeals closed its doors on the year 1974. Only moments earlier, the court may have closed the door on the lives of the Reverend Benjamin Chavis and the Wilmington 10, as it rejected the appeal of the young North Carolinians. The appeal had been argued before the court on August 28, nearly four months earlier. Usually, the Court of Appeals will rule inside of 30 days. But this is a most unusual case. The original trial of the Wilmington 10 in 1972 lasted two months, the second longest trial in the history of North Carolina jurisprudence. At the end of that trial the 10 defendants were sentenced to a total of 268 years on a variety of "conspiracy" charges. By the Court of Appeals delaying a decision until the end of its session, it successfully blocked any further defense efforts in 1974.

The Appellate Court thereby added one more chapter to an already long volume of racist repression which began four years ago with the Ku Klux Klan-led military siege of a church in Wilmington's Black community. Inside the church were the Reverend Ben Chavis and scores of young Wilmingtonians who were meeting to organize for equal education in the local schools. For four days they underwent an assault of bullets and firebombs. But a year later, Reverend Chavis and nine young co-workers were arrested on conspiracy and arson charges for the mob-caused violence during the siege of the church.

The very fact that the state saw fit to prosecute the victims of the attack rather than the perpetrators is in itself a continuation of the racist persecution of the Reverend Chavis and the Black communities of North Carolina, especially Wilmington. The nature of the prosecution and the courts, high and low, as illustrated by this document, is so obviously prejudicial and tainted.

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The court decision is 47 legal-size pages long, most of which restates the case of the state and ignores defense arguments. The court ruled that the defendants were tried before an "impartial, patient and courteous judge and by a competent, unbiased jury." The judge in the case, Robert Martin, is now a member of the Court of Appeals which rendered the decision. The case's prosecutor, Jay Stroud, was appointed federal attorney in North Carolina's eastern district by former President Richard Nixon just before he resigned the Presidency in disgrace.

Undoubtedly there is a conspiracy in this case. It is not on the part of the defendants but against them. With this latest decision, the North Carolina Court of Appeals has joined the conspiracy.

What follows are samples from the court's decision:

1) Sequestering and bias of the trial jury. During the trial, the defense asked that jurors be sequestered during voir dire examination so that they would not be influenced by one another's answers, especially in light of pre-trial publicity. The motion was denied.

The nature of the trial can be determined by the following excerpts of testimony:

"Q. (District Attorney) Let me ask you this. Have you heard or read anything with regard to any of these defendants in connection with these particular charges?

A. No, not these particular charges, no.

Q. And as a result of anything that you have read or heard have you formed any impression since you don't know anything that has gone on and you only have what you have read or heard to rely on, have you formed any impression about any particular or any of these defendants?

A. I have formed an opinion as to the character of one of the defendants.

Q. You have?

A. Yes, sir. That is as a result of what I have read. It is not the result of any other source of information. Just what I have read.

Q. As a result of that impression you have of that particular defendant, do you think it would have any bearing at all in what your verdict might be in this case on the basis of the evidence that will be presented here?

A. If I had a difficult time in reaching a verdict it just might possibly help me to in reaching a verdict, maybe, just might possibly. I am saying that the impression I have is an unfavorable one toward the defendant. I don't know the defendant personally. I have seen his picture.

Q. You have never seen him personally?

A. No.

of persons during the questioning of jurors. There are many examples of this, e.g. "Do any of you know Mr. or Mrs. James Jackson, a Black couple who lived in that house owned by Mrs. Fenell?" or "Do any of you know Mrs. McKeithan, a Black woman of Wilmington who lived next door to Mike's grocery store?" The Court of Appeals comments, "We can see absolutely no prejudice to defendants by the question of mentioning race in inquiries to jurors...In any event, their argument upon the point is feckless."

In the appeal, the defense made 105 exceptions to the trial judge's denying an inquiry of the jurors as to possible racial prejudice. Again, the Court of Appeals held that this was "largely" a case for the judge's discretion. Moreover, the court refutes North Carolina law (State v. McAfee, 64 N.C. 339) dating back to 1870. First the court quotes the North Carolina Supreme Court decision in that case: "A juror is bound to answer on oath, any question touching his competency...It is essential to the purity of trial by jury, that every juror shall be free from bias. If his mind has been poisoned by prejudice of any kind, whether resulting from reason or passion, he is unfit to sit on a jury." A reasonable enough assertion and one in keeping with the U.S. Constitution, but what does the present-day North Carolina Court of Appeals say in response? "We think the reason for the rule declared by the North Carolina Supreme Court over 100 years ago and by the United States Supreme Court 44 years ago has greatly dissipated and is far less compelling." Still the court grants that "the exercise of discretion by the trial judge nevertheless is subject to the essential demands of fairness."

It is worth quoting at length here to demonstrate the depth of the higher court's own racism. (Single-spaced quotes are from the trial transcript, double-spaced quotes from the Court of Appeals' decision):

"Q. Now, ladies and gentlemen of the jury, it so happens in this case that nine of the defendants on trial are black persons. The store that they are charged with burning is owned by Mike Poulos, a white person in Wilmington. Let me ask first if any of you presently have any feelings of racial prejudice against black people. This is would any of you more readily convict these persons

because they are black than you would if they were white? Do any of you feel more strongly about this case because the person whose store was allegedly burned was white? All of you feel that you could put that out of your minds and not let it influence your verdicts one way or the other in the trial of this case? One of the defendants, in this action, Mrs. Shephard, is white, young white lady. Does the fact that nine black men are charged along with one white woman give any of you any feelings about any of the defendants in this case which might be adverse to them or against them? Do any of you harbour any feelings of racial prejudice that you are aware of whatsoever? Have any of you ever belonged to any clubs or organizations which has as one of its tenets white supremacy?

SOL. STROUD: OBJECTION.

THE COURT: OBJECTION SUSTAINED.

"Obviously the question, or series of questions, was so rambling and confusing that a juror should not have been expected to be able to give an intelligent answer. Clearly the trial judge was correct in sustaining the objection.

"The next question which defendants argue the jurors should be permitted to answer was as follows:

"Q. Going back to Mr. Brown for a moment. I am sorry. What clubs or organizations in the community are you a member of, Mr. Brown?

A. I belong to the Burgaw Lions Club, Pender County Rescue Squad, American Legion, member of the Pender County Board of Education. I belong to several school groups. I belong to the Pender County Industrial Development Corporation. I have been a member of the Buckner Country Club, member of the Baptist Church. I am a Mason. That is all I can think of right off.

Q. Have you ever belonged to any club or organization that excluded black people among its membership?

SOL. STROUD: OBJECTION.

COURT: SUSTAINED.

"The juror had candidly and cooperatively answered as to every club and organization to which he belonged. The follow-up question, to which the objection was sustained, was probably impossible to answer. In any event it began to border upon harassment and bore no direct relation to the juror's prejudice, or lack thereof, against persons of the Negro race. Defendants have failed to show an abuse of discretion in this ruling, and we find none.

"The next series of questions which defendants argue the jurors should have been permitted to answer was as follows:

"Q. Have any of you ever been victims of a damage to property. Has anyone ever damaged your property that you know of? Any of your property burned by anyone? It happens in this case, ladies and gentlemen, and again I am just asking for your honest answers, that the nine defendants I represent are young black men. The store that is alleged to have been burned was owned by a white man, Mike Poulos, in Wilmington. Does the race of the parties involved bother anyone? Does that give any of you any problems?

SOL. STROUD: OBJECTION.

COURT: OVERRULED.

"Q. And is anyone bothered by that fact? I am really asking you if anyone feels more sympathetic to one side in the case or the other because of that fact? Do all of you believe in racial equality?"

SOL. STROUD: OBJECTION.

COURT: SUSTAINED.

"Q. Is there anyone on the jury who doesn't believe in racial equality?"

MR. JOHNSON: OBJECTION.

COURT: SUSTAINED.

"Q. Would any of you more readily convict a person charged with a crime because he is black than you would if he was some other color?"

SOL. STROUD: OBJECTION.

COURT: SUSTAINED.

"It should be noted that part of the first question of the series, although somewhat rambling and confusing, related directly to possible prejudice against persons of the Negro race. The trial judge overruled the objection. The next two questions of the series injected an inquiry about belief in racial equality. We think this type of inquiry does not address itself to possible prejudice against persons of defendants' race and was properly excluded."

The court concludes that, "The trial judge in this case was considerate and patient with defendants and allowed them wide latitude in examining the prospective jurors." The court does not mention that the trial judge, Robert Martin, now a member of the court, was assigned especially to the Wilmington 10 case after the original trial was suspended when a jury of 10 Blacks and two whites was chosen. Under Martin, a new jury was selected, consisting of 10 whites and two Blacks.

3) Suppression of the right of discovery. The state's case was based primarily on the testimony of an informer named Allen Hall. Hall, a former mental patient, gave a typewritten statement of his testimony to the prosecutors. As the prosecution is required to do, it showed this initial statement to the defense. However, in subsequent interviews between the prosecutors and Hall, the original statement was amended with notes by the prosecutor. The amended statement was denied to the defense. Defense attorneys appealed to the trial judge, Martin. Martin in turn read the notes but denied the defense the right to read them. The Court of Appeals also read the notes but also denies them to the defendants, the

only parties in the case who by now have not been allowed to read them. Why does the Appellate Court do this? Again, "The trial judge exercised his sound discretion." Even though the court feels compelled to at least quote from the U.S. Supreme Court's ruling in *Brady v. Maryland*: "We now hold that the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." Nevertheless, the North Carolina Court of Appeals opts for Judge Martin's "discretion" rather than for the law of the land as stated by the highest court.

4) Violent demeanor of the chief prosecution witness. Allen Hall, the former mental patient, was arrested for arson in connection with the Wilmington siege, at which time he claimed that he and he alone had exchanged gunfire with police on several occasions. During the pre-trial hearings when Hall became confused in his testimony he turned violent. At one point in the hearings he tried to physically attack the Rev. Chavis, against whom Hall admitted he carried a grudge. In the September trial, Hall again contradicted himself under cross-examination by defense attorney James Ferguson. With obvious holes in his testimony, Hall became agitated and once actually jumped out of the witness stand and assaulted Ferguson. It took six deputies to subdue and remove Hall from the courtroom, and one juror was knocked down by him on his way out. Judge Martin's response was to warn attorney Ferguson that he would be cited for contempt of court if he again "provoked" Hall.

The defense moved for a mental examination of Hall, and also moved for a mistrial because of the witness's actions. What follows is directly from the trial transcript:

"COURT: The Court finds and concludes that the demeanor of the witness and the incident was precipitated in some degree by his long cross examination, the rapidity of the questions, the tone of the examiner and that the motion for a mental examination of the witness is not required and the motion is denied.

MR. FERGUSON: May we let the record show that we except to each and every finding of fact by the Court and to the conclusions of law.

COURT: And also that the motion to strike the evidence of the witness is denied.

MR. FERGUSON: I would like if I may, to state that we would like to call to the Court's attention that shortly after the cross examination of the witness had begun and during recess of the Court we called to the Court's attention the fact that the witness was mouthing obscenities to me from the witness stand.

COURT: And also I believe that I made the remark, I asked you was it audible and you said there was no audible sound.

MR. FERGUSON: That is correct.

COURT: The motion for mistrial is denied."

As remarkable as Judge Martin's ruling was, the Court of Appeals upheld him, predictably enough by now: "In our opinion the trial judge exercised his sound judicial discretion in denying the motions."

The rest of the Court of Appeals' 47-page denial of the defense appeal is simply more of the same, ad nauseum. The defense argues that the trial judge showed prejudicial error in refusing to allow the point to be brought out that the prosecution witnesses, the informers Allen Hall and Jerome Mitchell, were being housed during the trial at a local beach resort at state expense. The Appellate Court of course upholds the judge. The defense argued that the judge erred in permitting the state to offer surprise witnesses whose names hadn't been furnished to the defense. The Court of Appeals again rules that this is a matter of the Judge's discretion and "no abuse of discretion appear." At one point in the appeal, the defense listed 2,685 exceptions to Judge Martin's "admitting into evidence...testimony...which was irrelevant, immaterial, incompetent, remote, prejudicial and inflammatory." Even the Court of Appeals is obliged to state that, "In our opinion some of the rulings constituted error," but rules in spite of this admission that, "In our opinion the errors in the admission of State's evidence were non-prejudicial beyond a reasonable doubt."

The Court of Appeals concludes its decision to deny the appeal with these words: "In our view defendants had a fair trial before an impartial, patient and courteous judge and by a competent, unbiased jury. They have been accorded every

reasonable request. The State's evidence was clear, and overwhelmingly tended to show the guilt of each defendant of the offenses with which he was charged. In the trial we find no prejudicial error. No error."

The vulgarity of the court's decision should surprise no one familiar with "justice" in North Carolina, a state which is being turned into a laboratory for repression. The next step for the defense is the North Carolina Supreme Court. There is no reason to believe that court will rule any differently, such is its composition. Clearly the only way the Wilmington 10 will receive justice is if large numbers of people are organized to intervene in the process of "justice."

Pressure should be brought to bear on North Carolina's new Attorney General, Rufus Edmisten, who served as Senator Sam Ervin Jr.'s main aide in the Watergate hearings. Edmisten should be asked to join with the defense in overturning the court's decision and freeing Ben Chavis and the Wilmington 10.

Local Wilmington 10 defense committees must be organized to mobilize the maximum pressure in this case. Please order in bulk from the national office, 150 Fifth Avenue, Room 804, New York, New York 10011.