

The Lynching of Jerome Wilson: An Appeal Won, a Life Lost



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I. INTRODUCTION

The story of Jerome Wilson is, in both the human and the legal sense, an extraordinary and yet characteristically anticlimactic example of a post-Reconstruction, Jim Crow-era Southern lynching. Jerome lived on a farm in Washington Parish, Louisiana with his family and was arrested in 1934 for the murder of a deputy sheriff. Arrested alongside his entire family, he was hastily convicted and sentenced to death. Although cries for extra-judicial vengeance were temporarily quieted by the verdict, Wilson appealed based on lack of trial preparation time and won a new trial in 1935. Just as his new trial was set to commence, he was savagely murdered by an enraged mob while in custody. No one was ever arrested for his murder. The question of state complicity remains unexplored. His family splintered and many of them migrated north. Having been denied a fair day in court, Jerome Wilson and the Wilson name vanished from local memory and from Washington Parish records. The holding reversing his initial conviction was narrow and highly fact-specific, so that any precedent set by the decision in his case became only a momentary exception within a legal environment in which the discretion of trial court judges still reigns supreme.

This paper first looks at the human story behind the law, beginning with background of the Wilsons and the events leading to the mass arrest of the Wilson family and Jerome Wilson's indictment for murder, and continuing through to Jerome's own murder in jail. The atmosphere of Washington Parish after the lynching is viewed through the lens of black scholar Horace Mann Bond's writings and correspondence. Next, the legal story is examined, starting with the substance and legacy of Jerome's appeal. A doctrinal history of the development of the aspects of case law at issue is then presented. Finally, Jerome's case is factually and legally contrasted with

the high-profile case of the Scottsboro boys, which generated the landmark Supreme Court case *Powell v. Alabama*.

II. WASHINGTON PARISH AND THE WILSON FAMILY

The Wilson family farm sat about 8 miles north of Franklinton in an area known as Star Creek in Washington Parish, Louisiana. Situated in the northeastern corner of Louisiana's "boot" and delimited on two sides by Mississippi, Washington Parish is reputed as a neglected economic backwater, culturally neither Creole nor Cajun, that has lingered untouched fiscally and populously by the rising suburban expansion of the westerly and southerly metropolitan areas of Baton Rouge and New Orleans.¹ Nevertheless, in the 1930s the parish boasted a high density of black landowning families - nearly half of all the local black farming families by some estimates.²

Paterfamilias John Wilson was a relatively prosperous landowning farmer who lived in Star Creek with three daughters, his wife Tempie (née Magee), and five sons, including Jerome.³ The acreage of his land holding was many times bigger than that of most black families and was comparable to that of the average white farmer in the region.⁴ The Wilsons grew cotton, corn, and sugarcane and were active on the livestock market.⁵ John was a well-respected member of

1 Adam Fairclough, *Washington Parish and its Black Community: Horace Mann Bond's Study of 1934-1935*, in *A FIERCE AND FRACTIOUS FRONTIER: THE CURIOUS DEVELOPMENT OF LOUISIANA'S FLORIDA PARISHES, 1699-2000*, 173 (Samuel C. Hyde Jr. ed., 2004), hereinafter Fairclough, *Washington Parish*.

2 *Id.* at 181.

3 ADAM FAIRCLOUGH, *RACE & DEMOCRACY: THE CIVIL RIGHTS STRUGGLE IN LOUISIANA, 1915-1972*, 26 (1995), hereinafter, Fairclough, *Race and Democracy*.

4 *Id.* at 27.

5 *Id.*

the community known for his fair dealings.⁶ The family “[was] a good example of what a Negro family [could] become – unsophisticated, of course, but honest, industrious, ambitious people.”⁷ Jerome tried his hand at city life for a few years, eking out a modest salary as a cook in New Orleans and elsewhere, but eventually returned to the Wilson’s rural hamlet in Star Creek to work the land with the rest of his family.⁸

Washington Parish was, and today still remains, a sparsely populated but tight-knit community wherein a small number of prominent family surnames recur, cutting across racial blood lines.⁹ Merely scratching the isolated area’s genealogical surface reveals a subterranean interracial kinship history born in slavery. Many of Washington Parish’s wealthiest slave-owners fathered mixed-race offspring in secret, including Jerome’s grandfather Wade Magee, and ex-slaves often adopted the names of their former captors even in the absence of direct family links.¹⁰ The events of 1934 that landed the Wilson family in jail would set three such interconnected families on a collision course.

III. SHOOTOUT AND ARREST¹¹

On July 21st, 1934, a white livestock inspector named Joe Magee arrived on the Wilsons’ property to enforce a health regulation requiring all mules to be dipped as a tick-eradicating

⁶ *Id.*

⁷ Fairclough, *Washington Parish.*, 184.

⁸ Part 7, Series A, File I-C-357, NAACP Papers.

⁹ Fairclough, *Washington Parish.*, 176.

¹⁰ *Id.* at 182-183.

¹¹ This version of the events is taken primarily from Fairclough, *Race and Democracy*, 26-29. Fairclough’s narrative appears to be drawn mainly from John Wilson’s own account in the Horace Mann Bond Papers.

measure.¹² Instead of finding John Wilson, Magee encountered his son Jerome, then 28, and informed him of the necessary protocol for livestock compliance.¹³ Jerome told Magee that his father was in Franklinton and that Magee would have to wait for John to return and discuss the matter.¹⁴ At this point the conversation became heated, with Magee threatening to confiscate the mule in question.¹⁵ Jerome responded by ordering Magee to vacate the property and threatening violence if he touched their livestock.¹⁶

After a couple of hours Magee returned fuming,¹⁷ accompanied by a white deputy sheriff named Delos C. Wood¹⁸ and two additional deputies, McCauley McCain and Bruce Spears.¹⁹ Seeing that events had escalated, Jerome offered to turn the animal over to Magee and the deputies, but Wood attempted a warrantless arrest²⁰ demanding that Jerome “go with me, boy.”²¹ As Wood approached the house, Jerome and his brother Moise asked to see a warrant.²² Their request quickly devolved into a grappling match over Wood’s sidearm.²³ Wood broke loose with

¹² Fairclough, *Race and Democracy*, 27 .

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Negro is Lynched in Louisiana Jail*, N.Y. TIMES, January 12, 1935, at 5.

¹⁹ Part 7, Series A, File I-C-357, NAACP Papers.

²⁰ *State v. Wilson*, 181 La. 61 (1935).

²¹ Fairclough, *Race and Democracy*, 27.

²² *Id.*

²³ *Id.*

pistol in hand and shot Moise in the stomach. Jerome was struck in the upper right thigh.²⁴

Retreating inside their home and retrieving a shotgun, Jerome reemerged and killed Wood instantly with a shot to the head.²⁵

The other deputies swarmed, and two other brothers were hit, one in the hand and one in the leg,²⁶ apparently after taking flight to avoid the gunfire.²⁷ One of those shot, Felton, was only twelve years old.²⁸ Subsequently, the entire family, including Jerome's mother Tempie, an uncle, and several daughters and sons were arrested and held in jail.²⁹ John Wilson was also arrested after returning from Franklinton.³⁰ Jerome, his brother Luther, and his mother Tempie were charged with murder³¹ as principals while the remaining family members were held as material witnesses.³² Moise, who had sustained the shot to his abdomen during the affray, succumbed to his wounds later that night in jail.³³

²⁴ *State v. Wilson*, 181 La. 63 (1935).

²⁵ Fairclough, *Race and Democracy*, , 27.

²⁶ *State v. Wilson*, 181 La. 61 (1935).

²⁷ Fairclough, *Race and Democracy*, , 27.

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² *State v. Wilson*, 181 La. 63 (1935).

³³ *Id.*

IV. TESTIMONY AT TRIAL

The account of the gun battle on the Wilson farm related here is variously clarified, obfuscated, complicated, or called into question by the conflicting testimony offered at trial by Joe Magee, Deputy McCain, and Felton Wilson. Magee testified that Jerome had already retreated inside the house prior to any shots being fired while Moise was outside trying to grab Wood's gun from its holster.³⁴

Magee's account was corroborated by McCain.³⁵ McCain testified that he witnessed Tempie physically struggling with Wood, who had his back turned. McCain stated that he then drew his gun in anticipation of Jerome coming back outside with a shotgun, (presumably to protect – unsuccessfully - the distracted Wood). McCain also stated that Wood was killed by the same bullet that wounded both Jerome and his brother Felton. In addition, he claimed that the same bullet had exited and inflicted Felton's leg wound.³⁶

Felton's testimony radically contradicted Magee and McCain's sequence of events. Felton stated that his own bullet wound was sustained prior to Wood being shot and that he believed Jerome's injuries had also occurred prior to the deputy's death. Felton explained that he had previously hesitated to share this account because "white people told [him] not to talk."³⁷ This version also casts doubt on the assertion that Jerome and Felton were hit with the same bullet since one would expect Felton to be in a position to testify confidently as to when Jerome was injured if both wounds arose simultaneously.

³⁴ Part 7, Series A, File I-C-357, NAACP Papers.

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

Tempie's alleged involvement in the physical altercation with Wood formed the grounds from her own murder charge.³⁸ Witnesses for the state also avowed that Luther, the third Wilson brother, had tried to grab Wood's gun after the deputy sheriff was slain, but that he had fled the scene when Magee beat him to it.³⁹

V. JEROME WILSON'S TRIAL, CONVICTION, AND DEATH

While the legal gears turned, mobs baying for blood assembled outside the jail.⁴⁰ The attempted lynchings were thwarted by law enforcement efforts,⁴¹ and the Wilson family continued to be held, apparently as a preventative measure.⁴² Only the promise of quick punishment kept tempers in Washington Parish from reaching a violent boiling point.⁴³ The immediacy of the need for resolution led to a rushed trial that left Jerome's defense attorneys with little time to prepare his defense. This situation later served as grounds for an appeal. The legal substance of the appeal and the precedent established are discussed in section VII below.

On July 30, 1934, Jerome was tried. Still seriously wounded, he was carried into the courtroom on a chair.⁴⁴ As reflected in the summary of the testimony above, the defense and the prosecution presented conflicting chronological accounts of the shootout that hinged on exactly when the shotgun was retrieved. The defense claimed that Jerome only fetched the shotgun after

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ Fairclough, *Race and Democracy*, 27.

⁴¹ *State v. Wilson*, 181 La. 63 (1935).

⁴² *Id.* at 68.

⁴³ Fairclough, *Race and Democracy*, 27.

⁴⁴ *Id.*

Wood shot Moise, while the state argued that Jerome picked up the gun prior to any shots being fired.⁴⁵ The version later preserved in the official appeal decision does not specify precisely when Jerome had the shotgun in his possession.⁴⁶ At least one extant report casts doubt on whether a shotgun even delivered the killing bullet. A letter from NAACP New Orleans branch president James E. Gayle to executive secretary Walter White contained an account of the events in which Wood was actually killed with a .45-caliber pistol from behind.⁴⁷

Outside of disputed facts, the general trial atmosphere itself was contentious. Angry white onlookers climbed onto sills and peered through the windows of the second-floor courtroom, which was standing-room only.⁴⁸ No black faces could be seen among the crowd; the only black person who attempted to enter--a Wilson-family relative--was assaulted upon entering the doorway and driven away.⁴⁹ When the jury retired for the day, as Jerome was being escorted back to jail, someone within the crowd of restive whites yelled "get him!" while a sheriff inside begged the would-be lynch mob to "give the jury a chance."⁵⁰

The advance of the mob was deterred and Jerome was swiftly convicted and sentenced to death by hanging.⁵¹ The jury's decision must have satisfied the bloodthirsty rabble in the short term. Nonetheless, the NAACP, still reeling from defeat in an embarrassing power struggle with the communist International Labor Defense (ILD) for representation of the Scottsboro boys at 45 *Id.* at 28.

46 *State v. Wilson*, 181 La. 61 (1935).

47 Fairclough, *Race and Democracy*, 487.

48 *Id.* at 27.

49 *Id.*

50 *Id.* at 28.

51 *State v. Wilson*, 181 La. 61 (1935).

trial, caught wind of Jerome's conviction and saw an opportunity.⁵² Percival L. Prattis of the American Negro Press out of Chicago alerted veteran journalist and NAACP national staff member Roy Wilkins to the situation, writing that it was “a case in which you cannot lose and which will enable you to sensationally contrast the Association's methods with those of the ILD.”⁵³ At Walter White's insistence, the New Orleans branch retained white powerhouse Attorney G. Wray Gill for Jerome's appeal and for Tempie and Luther Wilson's trial defense. This move must have put the state prosecutors on edge, since on November 5, 1934, they requested a continuance in Tempie's case.⁵⁴ The successful results of Jerome's appeal – analyzed in detail below – and the prospect of a new trial would prove too much for the white residents of Washington Parish who quickly took matters into their own hands.

When Walter White opened a letter on January 11, 1935 announcing the victory,⁵⁵ he must have had no knowledge of the tragic events that had unfolded on the ground earlier that morning. A group of white men⁵⁶ had entered the jail in Franklinton and located the cell where Jerome was still sleeping.⁵⁷ Awakened from his cot, his attempts to plead with his attackers for mercy quickly progressed to desperate screams for rescue.⁵⁸ None came. Jerome was either

52 Fairclough, *Race and Democracy*, 28.

53 *Id.*

54 *Id.*

55 *Id.*

56 *Id.* at 27-28.

57 *Negro is Lynched in Louisiana Jail*, N.Y. TIMES, January 12, 1935, at 5.

58 *Id.*

beaten to death with a hammer,⁵⁹ shot in the back of the head,⁶⁰ or both. A combination seems the most likely given an account relayed to Julia W. Bond about the state of the corpse: “One side of his face was mashed in and you could see the hole in the head. You couldn't tell it was him except for his mouth... his po' mother is speechless.”⁶¹

Common sense might lead one to believe that the armed men intended to enter and do immediate harm at the outset, though officers later claimed that Jerome was shot to silence him from alerting parish authorities, who had, on at least two occasions, foiled lynching attempts.⁶² The specific details of the events that occurred within the jail remain unknown, and the issue of possible complicity, passive or active, on the part of parish authorities remains a matter of speculation. One wonders how the lynch mob was able to gain access to a locked cell door, and how they were able to leave without interference after a loud gunshot. Perhaps a more elaborate or ritualized lynching scenario had been planned should Jerome have been extracted alive. Or perhaps a hasty execution was a last resort, allowing the mob to slip away. One might also wonder whether jailers or other law enforcement officials provided direct assistance or free passage. Ultimately, Jerome's lifeless body was unceremoniously dragged into a waiting car and dumped into a ditch a few miles outside of town.⁶³ He was 30 years old.⁶⁴

59 Fairclough, *Race and Democracy*, , 28.

60 *Negro is Lynched in Louisiana Jail*, N.Y. TIMES, January 12, 1935, at 5.

61 HORACE MANN BOND & JULIA W. BOND, *THE STAR CREEK PAPERS* 81 (Adam Fairclough ed., 1997), hereinafter *THE STAR CREEK PAPERS*.

62 *Negro is Lynched in Louisiana Jail*, N.Y. TIMES, January 12, 1935, at 5.

63 *Id.*

64 *Id.*

The NAACP seized upon the lynching to sharpen its lobbying efforts in the support of the Costigan-Wagner bill, the proposed anti-lynching legislation then before Congress.⁶⁵ White even wrote to President Roosevelt about Jerome Wilson's murder and reiterated the need for executive-level action to stop racial violence.⁶⁶ He also sent a telegram to former Louisiana governor Huey Long, then a senator and an outspoken opponent of the bill,⁶⁷ about what was being called “the first lynching of 1935.”⁶⁸ Long had decried the federal bill and asserted that Southern states would eradicate the lynching scourge through local measures. White fired back with Jerome Wilson's story as a way of highlighting Louisiana's ineffectual commitment to end lynching.⁶⁹ For his part, Long downplayed the importance of Jerome's murder in a rather offensive interview with Roy Wilkins:

Wilkins: “How about lynching senator? About the Costigan-Wagner bill in congress and that lynching down there yesterday in --”

Long: “You mean in Washington parish (county)? Oh, that? That one slipped up on us. Too bad, but those slips will happen... I can't do nothing about it. No sir. Can't do the dead nigra [sic] no good. Why, if I tried to go after those lynchers it might cause a hundred more niggers to be killed. You wouldn't want that would you?”

Wilkins: “but you control Louisiana...you could --”

Long: “yeah, but it's not that simple. I told you there are some things even Huey Long can't get away with. We'll just have to watch out for the next one. Anyway, that nigger was guilty of cold-blooded murder.”

⁶⁵ Fairclough, *Race and Democracy*, ,29.

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ Fairclough, *Washington Parish.*, 189.

⁶⁹ Fairclough, *Race and Democracy*, ,29 .

Wilkins: “But your own Supreme Court had just granted him a new trial.”

“Sure, we got a law which allows a reversal on technical points. This nigger got hold of a smart lawyer somewhere and proved a technicality. He was guilty as hell. But we’ll catch the next lynching.”⁷⁰

Aside from the NAACP, other organizations protested the lynching as well. The Writer's League Against Lynching produced letters that were signed by several notables in the literary and publishing worlds, including Alfred Knopf, Upton Sinclair, Zona Gale, and many others.⁷¹ These letters were sent to President Roosevelt urging him to encourage congress to pass Costigan-Wagner. Other letters were sent to Huey Long requesting that he use his power as “dictator of Louisiana” to catch the killers, and to then-current Louisiana Governor Allen to see that justice was done.⁷² On January 30, 1935, the NAACP convened a meeting in New Orleans involving black community members and dozens of local organizations.⁷³ At the meeting a resolution was adopted:

“WHEREAS the recent lynching of Jerome Wilson in the jail at Franklinton, Louisiana, has shown how hopeless is our condition as Negroes in the State of Louisiana, and;

WHEREAS, the ruthless overriding of the Mandate of the Supreme Court of the State in ordering a new trial in his case shows how defenseless we are;

BE IT RESOLVED that we condemn in no uncertain terms this dastardly deed;

Resolved Further that we call upon the good white citizens of our fair State to leave no stone unturned in investigating this awful crime to the end that the perpetrators may be brought to a speedy trial.

⁷⁰ Roy Wilkins, *Huey Long Talks on Negroes*, THE CRISIS, February 1935, at 41, 52.

⁷¹ *Writers Score Lynching*, N.Y. TIMES, January 13, 1935, at 33.

⁷² *Id.*

⁷³ Fairclough, *Race and Democracy*, 29.

WHEREAS, in the message of President Roosevelt the attention of the civilized world has been fixed upon the crime of lynching, and;

WHEREAS, expressions from citizens, as well as outstanding organizations, both North and South, have condemned this awful blight upon the United States;

WHEREAS, the Costigan-Wagner Bill now before Congress will eradicate this growing evil;

THEREFORE, BE IT RESOLVED that we urge the immediate passage of this Bill at this session of Congress."⁷⁴

In the end, the momentum for reform that was building at the federal level and in Louisiana suffered the same stalled fate. The Costigan-Wagner bill died on the Senate floor in filibuster, and despite protests, Jerome's murderers and any potential law enforcement accomplices walked free in Louisiana.⁷⁵

VI. HORACE MANN BOND AND STAR CREEK

Washington Parish, the Wilson family, and Jerome's lynching served as the focal point for a manuscript by famed black educator and academic Horace Mann Bond and his wife Julia W. Bond. After lying dormant for decades, it was finally resurrected and published in 1997 in a stitched-together version with explanatory commentary dubbed *The Star Creek Papers*. The task of reassembling and editing the unfinished manuscript was undertaken by Adam Fairclough, author of the seminal *Race & Democracy: The Civil Rights Struggle in Louisiana, 1915-1972*, which is referenced extensively in this paper, as it contains the most detailed secondary-source narrative of Jerome's lynching.

74 Papers of the NAACP, Part 12: Selected Branch Files, 1913-1939, Series A: The South, New Orleans, Louisiana branch operations, January-April 1935

75 Fairclough, *Race and Democracy*, 29.

The Bonds had lived in Star Creek for three months in 1934,⁷⁶ undertaking a study of black schooling and family life in the rural South which was made possible by a grant from the Rosenwald Fund,⁷⁷ a philanthropic organization interested primarily in black education. The Bonds' time in Star Creek produced a richly detailed sociological and genealogical account of the Wilsons that culminated in Jerome's lynching and its subsequent destructive reverberations throughout the family. For the Bonds, the lynching of Jerome Wilson was a microcosmic example of lynching as a significant contributing factor in the familial fragmentation and Northern migration of Southern blacks.⁷⁸ Contemporary views in the non-legal academic literature as to the ultimate veracity of the Bonds' sociological conclusions about black family structure are beyond the scope of this paper,⁷⁹ but *The Star Creek Papers* certainly provide fascinating on-the-ground reportage that captures the explosive tension of Washington Parish in 1935.

At the outset of their study the Bonds were struck by a relative absence of racial conflict in Star Creek; "easy familiarity between black and white seemed to be the rule."⁸⁰ It came as a surprise that black residents called local whites by their first names, that whites were invited to dine or share coffee in black households, and that genuine friendships between the groups seemed to have arisen without a spoken awareness that such close affinity was forbidden in

76 Fairclough, *Washington Parish.*, 174.

77 *THE STAR CREEK PAPERS*

78 *Id.* at xxiii.

79 For a discussion, see the introduction of HORACE MANN BOND & JULIA W. BOND, *THE STAR CREEK PAPERS* (Adam Fairclough ed., 1997).

80 Fairclough, *Washington Parish.*, 174.

wider American society.⁸¹ This characterization of the relaxed race relations in Star Creek is particularly notable in light of the fact that Jerome and Luther were still incarcerated for Wood's murder during the Bonds' residency.⁸²

Yet this impression soured precipitously after the Bonds caught wind of the lynching. Because they knew the Wilsons personally and had a great respect for the surrounding black community, the Bonds affectingly underscore the climate of fear in Washington Parish that followed Jerome's death. Upon hearing of his murder, the Bonds contemplated returning to Star Creek for another extended stay but were wary and frightened.⁸³ Julia wrote: "We are so unprotected... that little community is at the mercy of whatever impulse may come over these white people."⁸⁴ A tentative daytime foray to Franklinton in early February to test the untroubled waters in the wake of the lynching was enough to convince the Bonds not to return. Black residents were hesitant to speak openly, whispering even behind closed doors; the couple was urged to leave before nightfall. In fact, the Bonds heeded the advice and fled back to New Orleans shortly before dusk.⁸⁵ Julia was even cautioned to carry a handgun for protection.⁸⁶

The understandable air of paranoia led to conspiratorial rumors being propagated on both sides. White families were concerned after hearing stories of black maids refusing to report for work at the homes of their white employers, with some speculating that communists or another

81 *Id.*

82 *Id.*

83 HORACE MANN BOND & JULIA W. BOND, *THE STAR CREEK PAPERS* (Adam Fairclough ed., 1997).

84 *Id.* at 77.

85 *Id.* at 83.

86 *Id.* at 79.

shadowy group was pulling the strings.⁸⁷ Black citizens repeated among themselves unsubstantiated claims that some members of the lynch mob were black, sowing distrust during a pivotal moment that called for community solidarity.⁸⁸

Nonetheless, despite tension and mistrust, there had always been more overlap between the area's black and white communities than most cared to admit. Of particular interest to the Bonds during their 1934 study was Washington Parish's secret history of miscegenation, a rarely-acknowledged but pervasive social undercurrent that the Bonds credited as being partially responsible for the high incidence of black land ownership in the vicinity.⁸⁹ Slave-owners often bequeathed, if unofficially, land to illegitimate offspring conceived during extramarital affairs with their slaves.⁹⁰ In the 1930s former slave-owners "were still living in the community... direct[ing] the destinies of both white and black children and grandchildren whom they had brought into being."⁹¹ Wade Magee, Tempie's father, was rumored to be the biracial progeny of slave-owner John Magee and a slave named Keziah.⁹² John Wilson himself descended from former slaves of Hezekiah Magee.⁹³

87 *Id.* at 77.

88 *Id.* at 82-83.

89 Fairclough, *Washington Parish.*, 181.

90 *Id.*

91 *Id.* at 183.

92 *THE STAR CREEK PAPERS*

93 Fairclough, *Washington Parish.*, 179.

At first blush, the Woods and Wilsons would seem to have nothing in common: “the Wood family, white, hasn't had any too good a reputation. They have been in feuds and killings before...[o]n the other hand, the Wilson family, colored, has as its head a man who has been a republican political leader. While I have heard nothing to his detriment personally, the position he occupied aroused at least some suspicions among white people.”⁹⁴ But Delos C. Wood, the deceased deputy sheriff, was in fact Jerome Wilson’s distant cousin through two common great-great-grandparents –the slave owning Magees.⁹⁵ Though they finally collided in the 1934 shootout, the fates of the Woods and Wilsons had always been intertwined.

An interesting unresolved question is the potential connection between Joe Magee, the livestock inspector, and the Magees in the Wilson family tree. Could Joe Magee and Jerome have been related as well, bringing the process of family splintering initiated by the lynching completely full circle? Today there is a Star Creek Road in greater Franklinton. On either side are Alex Magee Road and Tob Wilson Road, but they never quite touch.

VII. LEGAL ANALYSIS OF THE APPEAL

On July 24th, 1934, those charged as principals were indicted with capital murder by a grand jury at the parish seat in Franklinton.⁹⁶ At around 3:00pm, they were arraigned and assigned counsel, entering pleas of not guilty.⁹⁷ Presiding was Judge C. Ellis Ott of the Twenty-Second District Court, Parish of Washington, who set the case for trial on the following

⁹⁴ Horace Mann Bond Papers, Correspondence, (<http://scua.library.umass.edu/story/images1/mums411.b72.f316.i003.pdf>)

⁹⁵ *Id.* at 183.

⁹⁶ *State v. Wilson*, 181 La. 63 (1935).

⁹⁷ *Id.*

Monday, July 30, 1934.⁹⁸ That evening at about 6:00 p.m. the court-appointed attorney visited the accused Wilson family members in jail, and the Wilsons expressed the desire to retain private counsel.⁹⁹ An attorney, M.I. Varnado from nearby Bogalusa, was hired. and arrived to meet with the Wilsons the following day, July 25, 1934.¹⁰⁰ It appears that most of that day's consultation was spent arranging the payment of services.¹⁰¹ On the evening of the 27th, Varnado requested that the Wilsons hire additional counsel to assist him in preparing a defense, and another attorney was hired the following day.¹⁰² Two attorneys were also appointed as special counsel for the prosecution.¹⁰³

On Monday July 30, 1934 the case was called for trial and the state motioned for a severance, which was granted.¹⁰⁴ Jerome Wilson was to be tried first.¹⁰⁵ The defense counsel then filed a motion for a continuance claiming that, despite engaging in thorough due diligence, they were given inadequate time to mount a proper defense under the circumstances.¹⁰⁶ The motion cited constraints of time: the fact that the trial was set to begin on the seventh day after arraignment; difficulties in communication and information gathering that arose from the fact that the members of the Wilson family were all confined separately; and concerns that Jerome's

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Id.* at 63-64.

¹⁰¹ *Id.* at 64.

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

serious gunshot wound presented a hindrance to defense preparation and made conducting a trial medically dangerous.¹⁰⁷

Judge Ott denied the motion based on the reasoning that the original state-appointed counsel had adequate experience in criminal law, that the imprisonment of most of the witnesses rendered them easily accessible, that the absence of complex questions of law reduced the amount of preparation time necessary to be deemed adequate. Judge Ott also noted that Jerome did not appear outwardly to be in physical pain.¹⁰⁸ A state doctor had testified that Jerome's medical condition was sufficiently stable to permit trial and that his mental state would not be affected.¹⁰⁹ Jerome Wilson was convicted of murder and sentenced to death by hanging.¹¹⁰

On appeal, the Supreme Court of Louisiana annulled the verdict and sentence and granted Jerome a new trial.¹¹¹ The case cites *State v. Roberson*,¹¹² as establishing the relevant precedent.¹¹³ In that case the court "erred in refusing continuance where counsel were given only four days in which to prepare for defense of two wholly distinct murder prosecutions, of which four days one was a Sunday, and another not available to one of counsel because of a previous engagement already undertaken by him."¹¹⁴ Typically, appellate courts in Louisiana will not overturn a trial court's decision on a motion for continuance except where circumstances are

107 *Id.* at 64-65.

108 *Id.* at 65.

109 *Id.*

110 *Id.* at 61.

111 *Id.*

112 *State v. Roberson*, 157 La. 974.

113 *Id.* at 65.

114 *Id.*

particularly extreme: “the matter of granting or refusing a continuance lies in the sound discretion of the trial judge, which will not be interfered with unless in extreme cases.”¹¹⁵

In *State v. Roberson*, the trial was fixed for the fifth day after arraignment.¹¹⁶ “To say nothing of capital cases in which this court has held the fixing of such a case within less time than six days to have been improper, we also find one case in which this court has held that a fixing for the sixth day did not allow sufficient time for preparation, to wit, *State v. Martin* ¹¹⁷, and no case in which any less time was thought sufficient... Not once has this court approved the fixing of such a case for any earlier than the seventh day thereafter except in *State v. Gilliard*.¹¹⁸ wherein the case was fixed for the sixth day after arraignment; but it appeared that counsel had been employed and at work on the case more than ten days before the trial.”¹¹⁹ In *Roberson*, the court said that continuance should have been granted because counsel had only four days, one a Sunday, in which to prepare a defense for two completely separate capital prosecutions, and one of the defense attorneys was unavailable on one day due to an already scheduled obligation.¹²⁰

In *Wilson*, the Supreme Court of Louisiana declined to make a specific ruling as to exactly how much time is necessary between arraignment and trial to afford the accused an adequate window in which prepare a defense.¹²¹ The court says that had the legislature intended

¹¹⁵ *Id.* at 66.

¹¹⁶ *Id.*

¹¹⁷ *State v. Martin*, 145 La. 35, 81 So. 747.

¹¹⁸ *State v. Gilliard*, 143 La. 604, 78 So. 978.

¹¹⁹ *Id.*

¹²⁰ *Id.* at 67.

¹²¹ *Id.*

to set a definite minimum, it would have done so, and the absence of one is read by the court as indicating that lawmakers wanted to defer to trial judges' wisdom.¹²²

Though the Louisiana Supreme Court had repeatedly held that it would not interfere with a trial judge's ruling on a motion for continuance except in extreme cases or where an abuse of discretion had occurred, the court thought that Jerome Wilson's situation qualified.¹²³ The holding is narrow in the sense that it considers the specific individualized circumstances of Wilson's trial in determining that the continuance requested should have been granted. This fact-specific analysis limited the precedent established by *State v. Wilson* and few cases cite to it.

The court's reasoning for annulling the District Court's verdict and granting Jerome a new trial are as follows:

There were three defendants jointly indicted. Counsel did not know until the morning of the trial, July 30th, whether the state would try all three jointly or ask for a severance. The defenses of the respective accused might well be different under the circumstances surrounding the killing and necessarily involve different questions of law. A bitter public feeling and resentment against the accused resulted in hostile demonstrations, which necessitated keeping of all of the members of the family in jail, pending the investigation and trial. The attorneys for the defense were required to make their investigation and preparation without the assistance and co-operation of the relatives of the accused, because of their incarceration. One member of the family having been fatally wounded, died in jail on the night of July 21st. Three other members of the family, including the defendant, were shot. Defendant's wound was serious and he [had a] temperature through Friday, July 27th. Eliminating the time required to make arrangements for the employment of the first counsel for the defense and the intervening Sunday, he had three full days in which to make his preparations and the second counsel who was

¹²² *Id.*

¹²³ *Id.* at 68.

employed on Saturday, July 28th, had less than two days before the trial.¹²⁴

The court held that, taken together, all of the circumstances listed combined to make Jerome's case exceptional.¹²⁵ Accordingly, the trial judge's denial of Jerome's motion for continuance constituted reversible error that effectively denied him a fair and impartial trial.¹²⁶ The court seemingly acknowledged, albeit indirectly, that part of the motivation for denying the continuance may have been to prevent a lynching from replacing the judicial process by ensuring that justice was swift: “[i]t is only natural that there should be public indignation where it might appear that a foul and brutal killing took place, but it should not be permitted to interfere with the orderly process of justice in such a way as to deprive the accused of his constitutional rights and guaranties.”¹²⁷

VIII. SUBSEQUENT CASE HISTORY

Though the phrase was not used and was explicitly developed only later in the context of pre-*Miranda* 5th amendment law (and later as a 4th amendment test after *Gates*), the analysis in *Wilson* essentially employed a 'totality of the circumstances' standard that neglected to highlight a particular factor as alone warranting reversal, but instead examined the cumulative effect of the overall facts. In contrast to setting a bright-line standard, for example a determinate number of minimum days between arraignment and trial in which to prepare a defense, the Louisiana Supreme Court used a highly fact-specific formula that limited *Wilson's* impact on future cases.

124 *Id.*

125 *Id.* at 69.

126 *Id.*

127 *Id.*

The test in *Wilson* functions to preserve trial judges' discretion in granting motions for continuance and does nothing to dismantle the well-worn practice of scrutinizing such motions only in extreme cases. The facts that, taken together, make *Wilson* extreme are sufficiently individualized and numerous that even a close approximation of the entirety of those conditions seems unlikely to recur. So, while *Wilson* is an outlier, in the sense that the facts satisfied the rarely-met requirements for being considered extreme enough to merit reversal, the case adds little to existing law. Hence only three subsequent cases cite to *State v. Wilson*, none successfully.

In *State v. Henry*, 196 La. 217 (1940), the defendant Annie Beatrice Henry was jointly charged on February 27, 1940 with a co-defendant for murder. On February 29th she entered a not guilty plea under the guidance of counsel appointed exclusively for the purpose of arraignment.¹²⁸ The case was then fixed for trial on March 27th.¹²⁹ On March 2nd, trial counsel was assigned by the state due to Henry's indigence.¹³⁰ On March 15th, a motion for severance from her co-defendant was granted.¹³¹ Finally, on the 23rd, a motion for continuance was filed with the stated grounds that the court-appointed lawyers had little experience in criminal practice, making the days until the March 27th trial insufficient for readying a case strategy.¹³² Nonetheless the case went to trial and Henry was sentenced to death.¹³³

128 *State v. Henry*, 196 La. 217, 226 (1940).

129 *Id.* at 226.

130 *Id.*

131 *Id.*

132 *Id.*

133 *Id.* at 227.

On appeal, the pertinent bills of exception made several arguments as to why the continuance motion should have been granted: that defense's unfamiliarity with criminal law made extensive research into the fundamentals of criminal trial practice and procedure incumbent; that the state-appointed attorneys had spoken only once with Henry, the meeting being limited to preliminary motions; that a great amount of defense counsel's time was ineluctably invested in the ongoing civil matters that constituted their primary practice; that investigation required travel; and that hurdles had arisen from the prosecution's having issued potentially prejudicial statements in the press.¹³⁴ Citing *Wilson*, the court remarked simply that the defense in Henry "had about twenty-five days within which to prepare for the trial and, under the jurisprudence as well as the facts of this case, that period of time was sufficient."¹³⁵

In *State v. Lejeune*, the defendant was charged the crime of pandering, which involved "maintaining a place where prostitution is habitually practiced."¹³⁶ Lejeune appealed his penitentiary sentence, with the relevant portions asserting that either a change of venue, or in the alternative a continuance, should have been granted due to prejudicial public outrage following his arrest.¹³⁷ In addition, it was argued that a continuance should have been allowed on the basis that defense was given only one full day between when an amended bill of particulars was received and the start of trial.¹³⁸ In what appears to be a reach, defense cited *Wilson* as precedent; the court proceeded to list out the whole set of factors considered there in detail, ostensibly to show that they added up to a far tighter bind than that faced by Lejeune, but without saying so

¹³⁴ *Id.*

¹³⁵ *Id.* at 228.

¹³⁶ *State v. Lejeune*, 248 La. 682, 685 (1965).

¹³⁷ *Id.* at 686.

¹³⁸ *Id.* at 690.

outright.¹³⁹ In a confusingly-worded passage, the court appears to say that the amended bill of particulars was satisfactorily thorough and provided the information demanded.¹⁴⁰

Finally, *State v. Wilson*, 204 La. 24 (1943), a July 13th denial of an application for rehearing based on an original appellate opinion dated June 21st, deals with how a criminal code governing the length of time allotted for filing a motion to quash after a grand jury is drawn should be construed.¹⁴¹ The substantive argument on the correct interpretation is highly complex and irrelevant to the facets of law at issue here. In essence, under one interpretation of the statute, which was the reading ultimately settled upon, the defendant in the 1943 *Wilson* case (no known relation) had forty-two days in which to file a motion to quash based on allegedly race-biased defects in the drawing and selection of grand jury members.¹⁴² Another reading of the statute was more favorable to the defense; this depended on whether “three judicial days” was understood as the three days following drawing the jurors (as the defense argued) or the three days after the expiration of the grand jury term (as the court ultimately read it).¹⁴³ That issue having been settled in the original opinion, Jerome’s appeal was cited in the denial for rehearing for its inclusive authorities showing that five days is considered sufficient time to plan for trial in a capital case, except where unusual circumstances exist, and that therefore forty-two days must be sufficient for filing a simple motion to quash.¹⁴⁴

139 *Id.* at 691.

140 *Id.* at 692.

141 *State v. Wilson*, 204 La. 24, 75-76 (1943).

142 *Id.*

143 *Id.*

144 *Id.* at 77-78.

IX. NOTES ON DOCTRINAL DEVELOPMENT

At the time Jerome's appeal was decided in 1935, Louisiana appellate courts' deferential standard of review with regard to continuance motions was codified statewide as *Article 320 of the Code of Criminal Procedure*, which read in part: “granting or refusing any continuance is within the sound discretion of the trial judge.”¹⁴⁵ No such rule appears in the current version; the closest is Article 712 on Discretionary Grounds, which states that “[a] motion for continuance, if timely filed, may be granted, in the discretion of the court, in any case if there is good ground therefor.”¹⁴⁶ A deferential posture remains in place, apparently circuit-wide, as common law. For example, see *United States v. Alix*.¹⁴⁷ The common law version of the rule continues to be cited, both civilly and criminally, even in 2014 Louisiana decisions that have yet to be officially published.

X. COMPARISON WITH *POWELL v. ALABAMA*

While *State v. Wilson* makes no direct mention of constitutional due process concerns raised by a lack of preparation time before trial, the 1932 Supreme Court case *Powell v. Alabama*, at the time of Jerome's appeal recently decided, tackles that issue unequivocally. *Powell* stands for the principle that the due process clause of the Fourteenth Amendment of the Constitution of the United States guarantees the accused in capital cases a fundamental right to have the assistance of counsel, including adequate time to confer, seek advice, and prepare a defense.¹⁴⁸

¹⁴⁵ *State v. Henry*, 196 La. 217, 228 (1940).

¹⁴⁶ LA. CODE CRIM. PROC. § 712

¹⁴⁷ *United States v. Alix*, 86 F.3d 429 (5th Cir. 1996).

¹⁴⁸ *Powell v. Alabama*, 287 U.S. 45 (1932).

The defendants in Powell were members of the infamous “Scottsboro boys”, a group of nine black teenagers alleged to have raped two white girls in a high-profile case that received nationwide coverage and necessitated the calling in of military soldiers to safeguard the accused from retribution. The circumstances of the case are well-known. The alleged crime was putatively committed on March 25, 1931 while the boys were stowaways on a freight train passing through Alabama. A group of nine white youths, two female, were also on the train and a fight broke out among the two groups. The white boys left the train to report having been attacked, leaving the white girls and black boys alone together in a train car until an alerted sheriff assembled a posse that halted the train and captured the black youths. The girls accused the black teenagers of sexually assaulting them, and several rushed trials followed that resulted in death sentences. The trials were so clearly rife with unfairness that the cases became among the most oft-cited examples of racist legal railroading.

The underlying procedural issues upon which certiorari was granted stem from a lack of opportunity on the part of the defendants to secure and confer with counsel before conviction. Immediately after indictment the defendants were arraigned and entered pleas of not guilty.¹⁴⁹ At that time, they were evidently not asked whether they could employ counsel or would like to have counsel appointed on their behalf.¹⁵⁰ On April 6, 1931, six days after being indicted, the defendants were called to stand trial.¹⁵¹ When it was inquired whether the parties were prepared to move forward, no one spoke up to answer for the defense.¹⁵² The trial judge had failed to name or assign a particular person or persons as defense counsel. Several of the lawyers present

¹⁴⁹ *Id.* at 49.

¹⁵⁰ *Id.* at 52.

¹⁵¹ *Id.* at 53.

¹⁵² *Id.*

had been appointed to assist in a limited fashion with arraignment. However, none of them had been given any indication about who should lead the defense through trial, hence the confusion and silence.¹⁵³ A rather off-the-cuff conversation then unfolded in which, on the morning of trial, it was worked out who would appear.¹⁵⁴ Because of this, “during perhaps the most critical period of the proceedings against these defendants, that is to say, from the time of their arraignment until the beginning of their trial, when consultation, thoroughgoing investigation and preparation were vitally important, the defendants did not have the aid of counsel in any real sense.”¹⁵⁵

The Supreme Court then went on to address the issue of the Fourteenth Amendment due process right to counsel. Its reasoning, in substantial part, reads:

In the light of the facts outlined in the forepart of this opinion - the ignorance and illiteracy of the defendants, their youth, the circumstances of public hostility, the imprisonment and the close surveillance of the defendants by the military forces, the fact that their friends and families were all in other states and communication with them necessarily difficult, and above all that they stood in deadly peril of their lives - we think the failure of the trial court to give them reasonable time and opportunity to secure counsel was a clear denial of due process. But passing that, and assuming their inability, even if opportunity had been given, to employ counsel, as the trial court evidently did assume, we are of opinion that, under the circumstances just stated, the necessity of counsel was so vital and imperative that the failure of the trial court to make an effective appointment of counsel was likewise a denial of due process within the meaning of the Fourteenth Amendment. Whether this would be so in other criminal prosecutions, or under other circumstances, we need not determine. All that it is necessary now to decide, as we do decide, is that in a capital case, where the defendant is unable to employ counsel, and is incapable adequately of making his own defense because of ignorance, feeble mindedness, illiteracy, or the like, it is the duty of the court, whether requested or not, to assign counsel for him as a

153 *Id.* at 56.

154 *Id.* at 55-56.

155 *Id.* at 57.

necessary requisite of due process of law; *and that duty is not discharged by an assignment at such a time or under such circumstances as to preclude the giving of effective aid in the preparation and trial of the case.* [Emphasis added]¹⁵⁶

The facts in *Wilson*, while discrete, parallel those of *Powell* in several regards. Both Jerome and the Scottsboro boys faced great public hostility and the potential for capital punishment, making effective assistance particularly grave. For the boys, the ability to secure counsel was impeded by living out-of-state, and although the Wilsons were able to secure representation for themselves, thorough preparation was discommoded by each family member being incarcerated separately (a circumstance the reviewing court lists in support of annulment). Similarly, while *Powell* concerns the due process right to secure counsel generally, and this did occur in *Wilson*, the Supreme Court in *Powell* also includes problems presented by lack of trial preparation time within its determination of whether such right was denied .

XI. CONCLUSION

In April of 1935, the New Orleans branch of the NAACP drafted “A Proposal to Form a National Committee for the Rehabilitation of the Wilson Family” and submitted the prospectus to the national office.¹⁵⁷ The proposal envisioned the formation of a committee for the solicitation of contributions to be used to prevent the northward migration of the Wilsons and instead resettle the family “in a desirable rural community in the South.”¹⁵⁸ Suggested invitees to the committee included W.E.B. DuBois, Horace Mann Bond, heads of the Rosenwald Fund, and prominent

¹⁵⁶ *Id.* at 72.

¹⁵⁷ Papers of the NAACP, Part 12: Selected Branch Files, 1913-1939, Series A: The South, New Orleans, Louisiana branch operations, January-April 1935.

¹⁵⁸ *Id.*

faculty at several historically black colleges and universities.¹⁵⁹ A touching sample fundraising letter read:

“Dear Friend:

Perhaps you read about the first lynching of 1935, the death of Jerome Wilson at the hands of a mob at Franklinton, Louisiana, on the 11th of January 1935. But you do not know, doubtless, what that lynching meant to the family of John Wilson and Tempie Magee, parents of Jerome. It meant the second violent death in their family in six months – Moise, brother to Jerome, was killed in July of 1934, in the shooting affray that culminated in the lynching in January.

It meant that John Wilson, who had just bought a farm of 172 acres upon which to settle his boys, so they could marry and raise such families as his, was obliged to sell the old homestead of fifty acres which he had bought as a boy of eighteen, and upon which he had raised a sturdy family of eight children.

It meant that John Wilson and his family have been torn from the soil into which the family had sent deep roots.

It meant that the Wilson family will be obliged to seek safety, a new life, somewhere else.

It meant that the Wilson's, in the natural order of things, will be obliged to join the urban wanderers on the face of the globe.

It meant that the Wilsons will have to join the great army of the unemployed in some city; that they will doubtless suffer from the disorganization that comes to the poor, and the friendless, and the weak, in an alien environment.

It meant that the young men will probably never have the chance to settle down and establish stable rural farm owing Negro families.

It meant that Alexzine, a girl of sixteen, soon to graduate from the Tenth Grade, a mighty fine girl in home economics and in character, will never be able to go to college, as the family had planned.

It means that Bunch, and Red, the other two young girls, will join the disorganized elements of an alien city.

It means that Felton and Bruce, the young boys, will grow up in a poverty stricken city slum.

That is, it means this if some way cannot be found in which the Wilson Family cannot be returned to the soil upon which they flourished.

159 Id.

They cannot do that in Washington Parish, Louisiana, where the Wilson homestead was, where Jerome and Moise are now buried. They can do that elsewhere, if there is money available to rehabilitate this fine American Ueoman family in a new agricultural setting.

Will you help? The National Committee for the Rehabilitation of [the] Wilson family invites your aid, no matter how small, in seeing to it that a great injustice is not followed by the total disintegration of a fine American family.”¹⁶⁰

An Assistant Secretary in the national office wrote back two weeks later to relay a dictated message on behalf of Walter White.¹⁶¹ Headquarters declined to participate, stating that organizing financial aid for individual families would set a dangerous precedent, but that the local branch was free to tackle the project unilaterally.¹⁶² The letter also expressed pessimism as to a future civil suit, citing diversity of citizenship challenges for a potential federal claim and a probable unwillingness to award damages locally.¹⁶³ To this author's knowledge, no fundraising efforts or civil suits ever advanced past the drawing board. Indeed, the northbound exodus that the proposed campaign intended to forestall was the ultimate result. Tempie Magee fled Washington Parish with the surviving children and relocated in Chicago, never to see her husband John Wilson again.¹⁶⁴ Did the letter's grim predictions come true? Did the family ever recover from the immense intergenerational hardship of loss and displacement? The fate of the descendants of the 1935 Star Creek diaspora remains unknown.

160 Id.

161 Id. at 1 of 3, page 1.

162 Id.

163 Id.

164 *THE STAR CREEK PAPERS*.