

LONG RONNIE 11 20 and 21 08.TXT

20 MR. BOWERS: Yes, Your Honor.

21 THE COURT: If you'll come around and take the
22 stand, please.

23 RONALD BOWERS, having been first duly sworn, testified as
24 follows on,

25 DIRECT EXAMINATION

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1 BY MS. BENNICK:
2 Q. Good afternoon.
3 A. Hello, ma'am.
4 Q. Sorry to have kept you on phone standby for so long.
5 A. Your husband has been very nice in trying to
6 accommodate me. I've had a lot of nice trips from
7 Salisbury to Concord.
8 Q. Would you please state your name for the record?
9 A. I'm Ron Bowers, Ronald J. Bowers.
10 Q. And would you briefly tell the Judge what your
11 educational background is?
12 A. Well, I have a BS in civil engineering from NC State
13 and a law degree from Carolina. And I was licensed to
14 practice, I guess, in '69. Haven't been asked that for
15 some time.
16 Q. And could you briefly describe for Judge Bridges what
17 your career background has been?
18 A. When I first graduated from law school I went in, I

19 was on delay to go into the army. So I was in the Army at
20 a JAG assignment in Vietnam, but not in a, I was not a JAG
21 officer. I was a Signal Corps officer. For a year I was,
22 first went through Signal officer basic at Fort Gordon.
23 Then I was assigned to teach in that, in Signal officer
24 basic as soon as I finished. I was in class 13 and taught
25 class 15. Then I was assigned to Vietnam for the second

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1 year and after Vietnam I came back and joined the DA staff
2 with Bob Roberts here I think the first of '72. Left in
3 the spring of '91.
4 Q. And after you left the Cabarrus County district
5 attorney's office, Mr. Bowers, what did you do?
6 A. I've been in private practice in Salisbury.
7 Q. Since that time?
8 A. Yes, I have. I guess I've been defending about as
9 long as I prosecuted, not quite as long but pretty close.
10 Q. And so in 1976 you were employed in the Cabarrus
11 County district attorney's office?
12 A. Yes, I was.
13 Q. And the chief district attorney was Bob Roberts?
14 A. He was the elected DA.
15 Q. And what was your position in 1976 at the DA's office?
16 A. About that time I became a senior assistant. Now, I'm
17 not exactly sure whether I was then or not. When I first

18 joined Furman James was the senior assistant. Then he
19 retired and Bays Shoaf was the senior assistant for some
20 time. And about then Bays left the office and I became
21 senior assistant.

22 Q. And as senior assistant what various areas did you
23 cover at that time?

24 A. We had four counties. We had Cabarrus, Rowan,
25 Montgomery, and Randolph. Normally about four weeks of

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1 court in Montgomery and 15 to 20 weeks of court in each of
2 the other three counties. I can't give you the exact
3 numbers, but the other three counties then were about
4 roughly equivalent size.

5 Q. Using the old saying, you traveled circuit?

6 A. Oh, yeah, with a couple of counties in between that
7 were not us.

8 Q. Trying cases --

9 A. Yes.

10 Q. -- and working out plea deals as an assistant district
11 attorney?

12 A. My assignment was to go generally wherever Superior
13 Court was. Normally it would be me and one other guy and
14 Bob would be at Superior Court. When we had conflict
15 sessions Bob would normally go to one and I would go to the
16 other and another assistant would be with each of us.

17 Those happened -- when I say conflict I mean two Superior
18 Court sessions in the district. You'd only have maybe one
19 in Montgomery and one in say Cabarrus or Rowan. And other
20 than that I was wherever Superior Court was.
21 Q. And I'm sorry, I lost my train of thought. In respect
22 of trying cases with Mr. Roberts, sort of in general and
23 then we'll talk specifically about this case, but in
24 general how did you divide up the work in preparing a case
25 that was going to trial?

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1 A. I guess -- I don't know exactly where you want me to
2 start there, but a week of court would normally start,
3 there would be an assistant that would normally have been
4 there talking to lawyers before and there might be some
5 pleas worked out. So the normal way that court would begin
6 is whatever pleas had been worked out would take the first
7 few hours of the week. And generally since I wasn't the
8 one that worked the pleas, somebody would tell me what the
9 first case was that they anticipated trial and I would
10 start preparing the evidence. It was quite often for
11 either Bob or the other assistant to pick the jury while I
12 was preparing the case.
13 Q. And is it your recollection that that's what happened
14 in the Ronnie Long case?
15 A. I believe Bob picked the jury. I don't think there

16 was another assistant. I think he picked it. I had not
17 been involved in the case until I came to actually prepare
18 the evidence. I don't know whether I started that Monday
19 morning or whether I'd had some time a day or two the
20 previous week. I'm sorry, I don't remember.

21 Q. That's okay. What was the Cabarrus County district
22 attorney's policy regarding providing discovery to the
23 defense in 1976?

24 A. The general policy was open book. And the easiest way
25 was to go see the officers. We had a staff of one in

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1 Cabarrus. That was Bea Hinson. Sometime around then Joan
2 Summers was hired to be in the Salisbury office, but I'm
3 not sure whether she had come on board by then or not. The
4 only other administrative staff that was there was the
5 administrative assistant, who I believe at that time was
6 probably Ralph House who was a retired FBI agent. Now, I'm
7 not sure. Ralph was with us for a few years. If there was
8 anybody else I don't remember it. Bob Martin, who was as a
9 retired ATF agent, later Sheriff of Rowan County then was
10 our administrative assistant for a number of years, but I
11 don't think he had started then. Anyway, that's all the
12 administrative staff. So Bea Hinson would type all the
13 indictments for all of the four counties normally and she
14 was all the staff we had.

15 In order to do discovery, the normal thing was tell
16 the, to whatever extent we had anything, give it to the
17 defense lawyer and then tell the defense lawyer to contact
18 whoever the primary officer was on the case and have him go
19 through his file with you. It was up to the defense lawyer
20 then to contact whatever the officer was and go through it.
21 Q. And did it also occur at times that Mr. Roberts, to
22 your knowledge, would just provide the discovery to the
23 defense himself in a meeting with them?
24 A. I understand from the materials that you and Ms.
25 Vaneekhoven --

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1 THE WITNESS: Did I say that right?
2 MS. VANEKHOVEN: Close enough.
3 A. Ms. Vaneekhoven said that there was some meeting like
4 that. I didn't know about it. I knew that Bob had handles
5 the discovery. That's --
6 Q. Bob had handled the discovery in this case?
7 A. I knew that Bob handled the discovery and I understand
8 he, understand that he had told the defense to go see the
9 officers for whatever he wasn't able to provide. Now, I
10 wasn't involved. That's basically all I know. I don't
11 know whether the attorneys representing Mr. Long did go see
12 the officers during their trial preparation to get the
13 additional information or whether they didn't. I still

14 don't know that.
15 Q. Then you also don't know whether that's what
16 Mr. Roberts told them to do on whether he just gave them
17 the discovery by handing them a package of documents?
18 A. I do not remember Bob specifically telling me that he
19 had done that in this case, but I do believe that that's
20 what happened and I do know that's the normal way that he
21 would do things. That would be within the pattern.
22 Q. Well, when the DA's office produced evidence to the
23 evidence where would that evidence come from?
24 A. Now -- what type of evidence are you talking about,
25 lab reports?

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1 Q. Let's start with documentary evidence.
2 A. We normally wouldn't have any originals and it's as
3 possible -- I've shown up in court with absolutely nothing
4 but the officer there and he had his file. We would have
5 no file whatever. If there was any file at all it might
6 have some copies in it and I would assume that any copies
7 he would have he would give them. But normally the
8 officer's file is what we had to work out of and nothing
9 else.
10 Q. When you say the officer's file are you talking about
11 the file that was given to you --
12 A. I mean, when the officer came to court to prepare the
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13 case, whatever they brought.

14 Q. Whatever they brought to court is what became your
15 file?

16 A. No, no. They would -- whatever they had and we would
17 make copies of or we would use or we would talk to them and
18 I just simply got whatever they were able to produce, such
19 as -- now lab reports are sent to the DA's office I
20 believe. That didn't happen then. The officer would take
21 whatever he took to the lab and then get a lab report back
22 to the police department or sheriff's office. And then at
23 some time later they would make us a copy and give it to
24 us. We didn't get lab reports directly from the lab so far
25 as any I'm aware of.

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1 Q. You would get them from the police department?

2 A. Excuse me?

3 Q. You would get them from the police department?

4 A. Correct.

5 Q. Going back for just a moment, if I may.

6 A. Sure.

7 Q. Which officers in this case might Bob Roberts have
8 told the defense attorneys to talk to?

9 A. Whoever the lead officers were. I believe that -- I
10 know Sonny Vogler was head of detectives, Butch Arthur and
11 David Taylor. And I saw Van Isenhour's name in the

12 materials you supplied. I'm sorry --

13 Q. I'm only -- I don't want you --

14 A. -- I remember --

15 Q. If you don't remember you don't remember.

16 A. I don't remember which officers had which
17 responsibilities.

18 Q. Okay. So you relied upon whatever the police officers
19 gave you in a particular case so that you could then
20 proceed to look at that and prepare for your trial?

21 A. Yes. And quite often the defense lawyers would have
22 more than I did when I got there.

23 Q. And that would be because it had been turned over
24 either by the DA's office or in a meeting with police
25 officers?

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1 A. It was not uncommon at all for me if I couldn't find
2 the officer -- when we got there the officers might be
3 available or might be somewhere else. I'd quite often
4 catch the defense lawyer and say, I'm going to be putting
5 this forward. Can you give me an idea what I've got? And
6 I'd learn something from him before I talked to the
7 officer. It sounds silly, but this is a small county. And
8 all I'd be asking him for is what he had already received
9 from whoever he got it. And I'd say I got discovery from
10 the defense, but it wouldn't be at all unusual for us to

11 talk like that.

12 Q. And do you recall what documents you and the DA's
13 office, I should say, not you personally, you or Mr.
14 Roberts, the DA's office, received from the police
15 department in this case?

16 A. No, I don't have any specific recollection of any
17 particular document. I've reviewed what you gave me, but I
18 don't have any independent recollection of any particular
19 document.

20 Q. If you would take a look, please, at Defendant's 4A
21 and 4B.

22 MS. BENNICK: Your Honor, I think you might
23 have them.

24 A. Okay.

25 THE COURT: I don't think I do this time. I've

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1 been the culprit before.

2 A. 4A is a typewritten thing that is signed by Van
3 Isenhour and 4B is a typewritten summary. The first time I
4 could be sure that I saw these is when I received them
5 either from you or Ms. Vaneekhoven. Somebody sent me a
6 copy of this and I looked over it, but no -- I don't have
7 any recollection of seeing this at the time. I'm not
8 saying one way or the other. I just don't remember
9 anything about it.

10 Q. Do you remember whether or not you had SBI reports at
11 the time of the trial?

12 A. I don't think the SBI was involved. If it was, my
13 memory is really bad.

14 Q. And Your Honor, if he could be shown Defendant's
15 Exhibit 5, please. And if you look behind the affidavit,
16 Mr. Bowers, of the custodian of records, you'll see the SBI
17 report.

18 A. Okay, yeah. This is -- you also sent me a copy of
19 this stuff, yes.

20 Q. And is --

21 A. That -- go head. I'm sorry.

22 Q. No, you go ahead.

23 A. Well, this is -- you mean the lab reports, are you
24 asking me when I first saw the lab reports?

25 Q. Yes.

1 A. I do not remember which lab reports, if any, we had,
2 even -- I just don't remember anything about which SBI
3 reports were there. I know there's the allegation that the
4 reports shown here were not provided. And looking at the
5 information you did provide me I expect that's correct
6 because I doubt that I had those. I'm not telling you I
7 have a specific memory, but I, looking at the materials you
8 provided and the questions I asked in regard to some of

9 this stuff, I would not believe I had it.
10 Q. And if you had --
11 A. I realize that may sound like a silly answer. I'm
12 sorry, I don't --
13 Q. No, no, no. If you had had the SBI reports would you
14 have provided them to defense counsel?
15 A. Oh, yeah. Oh, yes.
16 Q. You had an obligation to provide exculpatory evidence
17 as an officer of the court?
18 A. We provided everything as far as we had -- I think
19 witness statements were not discoverable at that time, but
20 any kind of scientific tests, anything else, was just
21 automatic. Now, assuming that if we -- they went to the
22 officer and got them, or when the officer brought them to
23 us we got them. I'm not -- if I had them then --
24 Q. If you had them you would have given them to
25 Mr. Long's trial attorneys?

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1 A. If I head them?
2 Q. If you had them.
3 A. And I thought they didn't have them, then I would have
4 brought them to them. But at the time that I tried the
5 case I assumed and believed that they had everything I had.
6 And I still think that.
7 Q. And that would be Mr. Roberts' policy, wouldn't it

8 have?
9 A. Yes.
10 Q. And did you know, Mr. Bowers, at the time that
11 Mr. Long's hat and gloves and toboggan had been sent to the
12 SBI for testing?
13 A. I don't remember anything about them going for
14 testing. The only thing I knew is that they were brought
15 by one of the officers to court and identified as having
16 been taken from him. Now, the way I -- there was a
17 toboggan from, again, I refreshed myself with the
18 materials. There was a toboggan, a leather jacket, leather
19 gloves, and some shoes, as I remember. Is that what you're
20 asking about?
21 Q. That is what I'm asking about. And that's what you
22 remember the physical evidence was in the case.
23 A. Truthfully, except for reviewing the document you
24 sent, I probably would not have remembered that. But on
25 reviewing it, yeah, that's consistent.

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1 Q. And in your experience the SBI does not retain
2 physical evidence when it's sent for testing. They return
3 it to local law enforcement agencies, correct?
4 A. Normally the procedure that was used at the time of
5 the trial of this case was that the only lab we had was the
6 SBI. And the officer would normally drive it down there.

7 If they did what I asked them to do, they would not mail it
8 or send it by some third person. An officer that would
9 normally be involved in the chain would personally take it
10 to Raleigh and personally go get it. And that was a
11 request that I made as a policy so we kept the chain of
12 evidence as simple as possible. When I tried cases I liked
13 to put the chain in and I tried to do that in as simple and
14 straightforward a way as I could.

15 Q. Do you recall -- I'm sorry, withdraw. Was Van
16 Isenhour the evidence custodian at the time?

17 A. I know he -- I do not remember much about Van as an
18 individual. I do know that the police department and --
19 yes, I assume it was Van, but I don't independently
20 remember Mr. Isenhour and what he played or what the other
21 officer, what part they played. I know the officers
22 brought the information and at the time I would have gone
23 through it in rather significant detail, but I don't
24 remember which, in my own recollection which officer
25 brought it or what the chain of custody was. I have to

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1 rely on whatever I've got.

2 MS. BENNICK: If I could just have a moment,
3 Judge.

4 THE COURT: Yes, ma'am.

5 Q. Mr. Bowers, do you remember or recollect that a full
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6 rape kit was taken at the hospital and that the rape kit
7 was later retrieved by an officer of the police department?

8 A. The only thing I know that the victim was examined by
9 a doctor. I don't remember his name. I saw in the
10 materials, I would always bring the doctor to testify what
11 he got. I don't remember what -- and I haven't had a
12 chance to review the transcript, so I don't know what all
13 the doctor saw or said.

14 And as far as a rape kit, that sounds like the sort of
15 a thing that would be standard and everybody would know
16 what's in it. That's not it. At that time, and probably
17 still now, each department has their own way of doing
18 things and sometimes they have containers that they expect
19 the medical personnel to use to put samples in. Sometimes
20 they didn't. Sometimes they just used or got from the
21 hospital whatever they used. So the term rape kit is the
22 colloquialism we used, but it really wasn't a standardized
23 kit. It was just our vernacular for what the officers
24 would get from the samples or whatever the medical
25 personnel got from the victim at the hospital.


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1 And no, I don't remember what was gotten. I've looked
2 at the materials you gave me and I realize that there was a
3 slide. And from what I remember in looking at it, there
4 were some swabs put in a test tube that the materials I

5 received said were given to an officer and I forget which
6 officer. Mr. Lee? I'm not sure. I think that's -- you're
7 asking if I have an independent recollection of that?

8 Q. That's right.

9 A. No. The only think I know is that when I asked the
10 doctor about it, according to the materials I read, I
11 didn't ask anything further. That pretty much indicates I
12 didn't know about anything further, because when I saw in
13 the materials that there were vaginal swabbings that were
14 put in a test tube my first thought was, well, was there
15 some kind of, were they sent to the lab to test it, because
16 obviously if we had such they should have gone to the lab,
17 they should have been blood tested. But we didn't have DNA
18 then, but we did have different blood grouping tests that
19 we depended on, but it took a higher quantity than current
20 DNA. Then if you got vaginal swabbings from the victim it
21 took a significant quantity more and the degree of accuracy
22 that a lab man could give you was limited by the cumulative
23 percentages. You had the ABO test, the RH test, I think
24 there was one called EAP and one called PGM. And there may
25 have been more. And --



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1 Q. And there were -- if I can interrupt you. Were any of
2 those tests, because I'm frankly not familiar with those
3 terms, test, the blood testing could not only be done in
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4 terms of the type, blood type A, B, O, O positive,
5 whatever, but there was a test for secretors and
6 non-secretors. I don't know what the --

7 A. Yeah, yeah, I forget about that, yeah, you're right.

8 Q. -- technical term was for secretor and non-secretor?

9 A. I don't either. You're right. I had forgot about
10 that.


11 Q. That was another way that --

12 A. You're right. There was --

13 Q. -- blood can be tested.

14 A. There was something about -- but I think if it's a
15 non-secretor then you would not find certain types of
16 information that you would find, but I think you always had
17 ABO and there were -- you could always determine RH, but
18 I'm not sure about the others. I had forgotten that. If
19 it is a non-secretor then it just wouldn't show anything.

20 But in answer to your question, what -- if I had known
21 that they had those swabs then I would have been trying to
22 find out what happened to them, because the first thing
23 that should have been done is a test to determine whether
24 any one of those groups showed up in the test different
25 than the victim, because what you ask the officers to do is



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1 send down the swabbings together with a blood sample from
2 the victim and look for which indicators such as PGM Number

3 1 and Number 2. If the victim was a Number 1 and all you
4 found in the PGM testing was Number 1, well, that didn't
5 give you anything. But if you found a PGM type 2 it
6 couldn't have come from the victim. There would be a
7 reason to get blood from the defendant.

8 If we knew we had that, we'd have gotten a search
9 warrant for Mr. Long to get blood from him. The fact that
10 we didn't do that almost says to, it just says to me that
11 we didn't know we had that. We didn't know there were
12 such. And when I looked at this --

13 Q. We meaning you and Mr. Roberts?

14 A. Me and Mr. -- okay, yeah. I guess I should only speak
15 for myself, but I think I, I think --

16 Q. I just mean --

17 A. Bob, if he knew this, he'd have done the same thing I
18 would. We're going to get that. That's not an if. That's
19 not a, hey, maybe we'll think about this. That's an
20 automatic. Now, if there's an -- but the first test is get
21 somewhere, get tested, and find something different than
22 the victim, okay? If we didn't know that, then we would
23 have no basis that ask -- I don't think we had the
24 non-testimonial identification order then. I think that's
25 before that law came into effect. We had to get a Ask for

2 we'd have asked for a search warrant to get a sample of his
3 blood. Since we didn't do that it's pretty clear we didn't
4 know we had that. And the other thing that, what came to
5 my mind is when I saw it -- and pardon me. If I'm running
6 off at the mouth I don't mean to.

7 Q. No, go ahead.

8 A. When I saw that it went into a test tube that bothered
9 me because it's only going to last so long in a test tube.
10 It's going to rot. And if it's -- DNA requires drying, as
11 I understand it. And if it's sat in a test tube for a
12 period of time it's just simply going to rot. So I don't
13 know. I didn't realize that until I saw the materials you
14 sent me and maybe I shouldn't say anything like that. But
15 it's just a thought that I had when I looked at it. After
16 you've tried a bunch of cases you begin to say, what's
17 going on here?

18 Q. And would you make the same assessment about the hair
19 evidence in this case? There was a suspect hair found at
20 the crime scene and the victim's clothing and the victim's
21 pubic hair combings were sent to the SBI for testing. And
22 would you make the same analysis in respect to the, what
23 I'm calling the rape kit? I know that's our colloquial
24 lawyer term.

25 A. The defense lawyers should have had that. I should



1 have had that. From what I'm seeing, I didn't have that.
2 But in terms of the significance of that, if that's what
3 you're asking me and the meaningfulness of it, I wouldn't
4 consider it truthfully very meaningful. If you want me to
5 stop there, I'll stop there, but if you want me to explain
6 it I'll explain it.

7 Q. No. What I'm asking though, Mr. -- maybe I didn't
8 make my question clear. I understand what you said. You
9 would have had it tested.

10 A. Yeah.

11 Q. Give me a second.

12 A. If I had known about it --

13 Q. If you had known about it you would have asked for it
14 to have been tested?

15 A. Yes.

16 Q. I'm sorry. I lost my train of thought.

17 A. I didn't mean to -- it's perfectly fine. But --

18 Q. But if you had done those things, you would informed
19 the defense counsel about it?

20 A. Oh, yeah.

21 Q. And I think my last question is when you were putting
22 -- I don't want to put words in your mouth. It's not
23 exactly what --

24 A. Now, at the time I was trying the case I assume they
25 had everything I had. I didn't, every time I put an

1 exhibit walk over and say, hey, you guys had this. I just
2 assumed, I assumed they had it. So yes, if I knew they
3 didn't have it and I had it, they got it. But if I didn't
4 know they -- if I didn't know to ask I didn't ask. If I
5 did not know that there was something missing I wouldn't go
6 to them and say, hey, what about this? I'd just try the
7 case.

8 But in regard to the trial of the case there's
9 something else. I realize I'm running on here. I'll stop
10 if you want me to. But there's a thing that -- in regard
11 to this hair and this stuff, one of the things that you
12 said was that I asked Mr. Isenhour a question about
13 something and he said he only took something down to the
14 lab, the latent print, the shoe, and that I stopped there.
15 If I had known about the rest of this I wouldn't have
16 stopped there, because I'm not going to make -- that's a
17 strategic mistake that's just stupid. If I have tests, if
18 I have evidence that he's taken it to the lab, I'm not
19 going to sit there and let the defense lawyer be the one to
20 bring that out. If I know about it it's coming out.

21 And so the fact that I didn't ask any more questions
22 right then is an indicator to me that I didn't know about
23 anything more than that, because it would be just really
24 stupid trial strategy to, you know, let that go and let the
25 defense lawyer come back up and say, oh, you took more than

1 that. And I'd be sitting there looking like I had egg on
2 my face. That's just not going to happen.

3 MS. BENNICK: Okay. Your Honor, I have no
4 further questions.

5 THE COURT: Cross exam?

6 MS. SHANLEY: Yes.

7 CROSS EXAMINATION

8 BY MS. SHANLEY:

9 Q. So Mr. Bowers, you're saying that back then when you
10 were practicing in 1976 --

11 A. I'm still practicing.

12 Q. As a prosecutor.

13 A. Yes, okay.

14 Q. That prosecutors didn't have files.

15 A. That's too broad. On some cases -- well, on cases
16 like this if we got something in advance we would have a
17 file. It wouldn't be as extensive, I'm sure, as the police
18 file, but yes. If you had time to prepare in advance you
19 would get whatever you had as a file, but it would not be
20 the same kind of file that, I guess the extensive file that
21 the DA's now have that includes virtually everything.

22 Q. Now, in fact you said the you believe in this case you
23 wouldn't have come on to the case probably more than a week
24 before the case was tried.

25 A. Correct.

1 Q. And that this case was tried months after the rape
2 occurred. I think, was this October this case was tried
3 and the rape occurred in April. Does that sound right to
4 you?
5 A. No. No, it doesn't. I think the rape was some months
6 before this.
7 Q. The rape was April 25th. When was the trial?
8 MS. BENNICK: September.
9 Q. September.
10 MS. BENNICK: Early September.
11 Q. So this --
12 A. That sounds more like it.
13 Q. So you would have had a week to prepare while law
14 enforcement would have had probably three months worth
15 of --
16 A. I don't think I had a week. Normally -- I don't know
17 where I was the week before this. But probably the week
18 before this I would have been in Rowan or Montgomery or
19 Randolph trying cases. That earliest I probably could have
20 gotten to this would have been Thursday or Friday of that
21 week when most of that term was over. So if I had Thursday
22 and Friday or maybe just Friday of the week before and the
23 time that Bob selected the jury, that would be more
24 standard. Now, on some cases we were able to break me free
25 and I had more time. So I cannot tell you that I didn't

1 have three or four days the previous week to prepare. I
2 just don't remember. It would have been unusual.
3 Q. So you probably had about seven days to prepare, is
4 that correct?
5 A. Well, you're exaggerating.
6 Q. At the most.
7 A. More likely two or three. At the most four or five.
8 I don't think I ever had seven.
9 Q. So your file would have consisted of work produced in
10 two or three or four or five days.
11 A. Yes.
12 Q. Law enforcement's file would consist of all the work
13 they had for about three months worth of work?
14 A. And they would bring it to me at that time.
15 Q. And you said that because of that that's why your
16 office would refer --
17 A. Yes.
18 Q. -- defense counsel to law enforcement.
19 A. A very standard thing to do.
20 Q. In this case in the motion for appropriate relief, the
21 first one back in 1988, the attorney testified that Mr.
22 Roberts had made available the police officers for them to
23 go and they could ask the officers to get them whatever
24 they needed. Does that seem consistent with something
25 Mr. Roberts would do?

1 A. It is fully consistent with the way we -- it's the
2 only way we could do things. We didn't have enough staff
3 to do it any other way.

4 Q. Well, then that required some diligence on the part of
5 the defense attorneys then, did it not, to actually make
6 this appointment, ask for the things, see the file and so
7 forth?

8 A. I'm not going to -- yes, I do believe that that's
9 their responsibility. But I'm not going to sit here and
10 say that somebody made mistakes in whether they did
11 something or didn't do something. I'm just saying that if
12 they wanted to see the police file they should, they needed
13 to call the office or set up an appointment to go look at
14 it.

15 Q. That's not my question. But if they wanted to see the
16 file they'd have to actually get up and do something.

17 A. Well, yeah. But the officers would know to expect the
18 call and to cooperate.

19 Q. And they did so. The officers would expect them to
20 call and would hand over whatever was asked.

21 A. If they didn't I certainly would expect to hear from
22 the lawyer and then I'd call the officer and say, you
23 didn't do it the first time. Get with him this time.
24 Because I didn't need a bunch of delays when I got to try a
25 case.

1 Q. Do you recall in this case receiving complaints from
2 defense attorneys, they won't give us anything, they're
3 being stubborn?

4 A. I didn't handle discovery, so if such happened it
5 probably wouldn't have come from me. But I didn't --
6 nobody called me. The only time that I met the defense
7 team was when I got -- I guess just about the time jury
8 selection started or that morning. And as far as I know,
9 we were on different sides, but everybody was very cordial
10 to each other. I remember no animosity or problems of any
11 sort. Nobody complained about anything to me.

12 Q. A review of the court records did not find a motion by
13 the defense claiming they did not receive discovery, so
14 would that be consistent with your recollection or not?

15 A. Try that again. I didn't understand. Say that again,
16 please.

17 Q. A review of the court records showed that there was no
18 filing for discovery, no motion to compel.

19 A. Okay.

20 Q. Does that seem consistent with what you recall?

21 A. It does seem consistent, but I didn't know that. I
22 would find -- I would not think they'd need to, because I
23 think Bob, I thought Bob had given them everything.

24 Q. Now, the discovery rules back in 1975 and 1976 didn't
25 require open file discovery, correct?

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- 1 A. That's correct. But now -- go ahead.
- 2 Q. In fact, Mr. Bowers, the open file discovery rule did
3 not really take effect until 2004 where we have to provide
4 everything to the defense, is that correct?
- 5 A. I believe 2004 is the right date. I'm sorry. Yes, I
6 think so. I should know that off the -- I should know the
7 month of that. But that's about the right time.
- 8 Q. So Mr. Robert was in effect about 30 years ahead of
9 his time.
- 10 A. Okay.
- 11 Q. Would you agree with that?
- 12 A. In that way of doing things, yes. Yes. And actually
13 more than that in some ways. Go ahead.
- 14 Q. Based on your experience with working with him did he
15 ever hold back what you would consider exculpatory
16 material?
- 17 A. No. Bob and I tried a lot of cases together. And it
18 was -- the normal way we did it was for him to select the
19 jury while I prepared the evidence. We were in full
20 agreement that the last thing we wanted to do was convict
21 an innocent man. And I would often in my arguments say to
22 the jury, if you believe the defendant is innocent you're
23 doing a high duty to find him not guilty. Because if an
24 innocent man is convicted then two wrongs are done. The

25 innocent man is imprisoned and the guilty man that needs to

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1 be imprisoned is forever free. It's a double wrong and
2 just shouldn't happen. But then in the normal I guess
3 you'd say part of the argument I'd say, here are the
4 reasons you should believe that the defendant is guilty and
5 would go through. But I must have said that hundreds of
6 times in jury arguments. And I believed it then. I
7 believe it now. There's no excuse in going after an
8 innocent man.

9 Q. And that's how you and Mr. Roberts operated back in
10 1976 when this case was being tried?

11 A. Oh, yeah. Yeah.

12 MS. SHANLEY: Nothing further, Your Honor.

13 THE COURT: Redirect?

14 MS. BENNICK: No further. Nothing further.

15 THE COURT: Thank you, sir.

16 Further evidence?

17 MS. BENNICK: May I have a moment?

18 THE COURT: Yes, ma'am.

19 MS. SHANLEY: Your Honor, can Mr. Bowers be
20 released?

21 MS. BENNICK: He can from me.

22 MR. BOWERS: Can I express appreciation to the
23 folks that helped me drive back and forth and try to get