

**UNDISCLOSED, the State v. Ronnie Long**  
**Episode 2 - Judge, Jury, and Executioner**  
March 19, 2018

**[00:22] Colin Miller:** The phrase “judge, jury, and executioner” traces its origin back to the 1693 William Congreve play The Double-Dealer. In the play’s Epilogue, Congreve writes:

The law provides a curb for its own fury,  
And suffers judges to direct the jury:  
But in this court, what difference does appear!  
For every one’s both judge and jury here;  
Nay, and what’s worse, an executioner.

Now, the phrase “judge, jury, and executioner” is used to describe the consolidation of all of the power of the law into one person or one body. Most commonly, the phrase is used in the fictional realm. Think Charles Bronson or Bruce Willis delivering vigilante style death wishes. Or Judge Dredd and the street judges of Mega-City One deciding guilt or innocence and life or death in a matter of minutes.

In the real world, it’s becoming rarer and rarer that the long arm of the law can extend into all parts of a criminal adjudication process. But in Concord, North Carolina in 1976, there was one law that took a key decision out of the jury’s hands and another that ensured that Ronnie Long might not have a jury of his peers. A change to that first law spared him his life, but the second law may have ensured that he lost his freedom.

**[1:32] Rabia Chaudry:** Hi and welcome to Undisclosed, The State vs. Ronnie Long. My name is Rabia Chaudry, I’m here with my colleagues Susan Simpson and Colin Miller.

**Colin Miller:** Hi, this is Colin Miller. I’m an associate dean and professor at the University of South Carolina School of Law and I blog at Evidence Prof Blog.

**Susan Simpson:** Hi, I’m Susan Simpson. I’m an attorney in Washington D.C. and I blog at ViewfromLL2.com.

**Rabia Chaudry:** This is episode two in our four episode series on the Ronnie Long case out of Concord, North Carolina.

**[2:04] Rabia Chaudry:** We ended episode one on May 10, 1976, with Juddy Bost wearing a disguise and identifying Ronnie Long as her assailant in a courtroom, a highly unusual identification procedure that is possibly unprecedented in American history. Bost then went to the police station and picked Ronnie Long out of a photo array. Meanwhile, after his court appearance, Ronnie Long went home to his family's house, and, after an uneventful day, headed up to his room to take a nap. At around 6:00 P.M., Sergeant Taylor and Sergeant Lee, the same officers who were in the courtroom for the identification, showed up at his house:

**Ronnie Long:**

Me and my mom walked out in the yard, the driveway, they standin' in the driveway, it's them two, David Taylor and Marshall Lee, they told me "Ronnie, we need you to come back downtown to sign some papers in regard to the trespassing violation." My mom said, "does he need a lawyer with him, or someone with him?" "No Ms. Long, He don't need nobody with him, he ain't gonna be down there more than 10 or 15 minutes." "Okay. Do you need a ride down there, or can you drive down?" I told my mom I says well I'll drive down, but when I leave there I'm going back to Charlotte, I had something to do in Charlotte. So when I went down she tells me, she said, "Call me when you get there and call me when you leave."

**Rabia Chaudry:** Ronnie's sister Lynda was also home, and she has a similar recollection of the visit by the police officers:

**Lynda Long:**

I had come down the street, I stayed up the street, and I was down here and um, the police had come down here and they knocked on the door and they were saying they wanted to see Ronnie Long, Ronnie Long needs to go uptown for questioning. And um, our dad asked the question, "Do I need to come with him?" And they said "No, because we're takin' him uptown..." they lied, they said there were taking him uptown for no trespassing. And they took him up there and they locked him up for that, for the rape thing.

**Rabia Chaudry:** Colin also spoke to Ronnie's mother, Elizabeth. She's 86 years old now, but she still has a good recollection of the night her son was taken away:

**Elizabeth Long:**

They came and told, asked me was Ronnie home. And I told, and they got Ronnie, they took him back uptown, and Ronnie, she told Ronnie they said,

Lynda said, asked could he drive the car up there, he drove the car up there, went up there, and when they took him up there they kept him up there. They said he was the one that done the rape. I don't know nothin' about that, because he didn't do it. I know he didn't do it. Because he was here.

**Rabia Chaudry:** So, at about 6:00 P.M., the police got Ronnie to come to the police station under the false pretense that he needed to sign some paperwork connected to the trespassing charges that had been dropped earlier in the day. Then, once they got him there, their true intentions soon became clear:

**Ronnie Long:**

When I get down there, Sonny Bowman tells me, Sonny Bowman was the lead detective, Sonny Bowman tells me take everything out of my pocket. Well I take everything out of my pocket and put my keys on the table. David Taylor picked my keys up, him and Lee, Marshall Lee. I asked, "Where y'all goin' with my keys?" Was the question that I asked. They tell me "Just be quiet, settle down, we'll be right back. They're just goin' down to look at your car." I told them, I didn't ain't nobody, I didn't give permission look in my car. I ain't give nobody permission to look in my car. While we're sitting there talkin', he tell me I'm a suspect in a rape.

**[5:55] Susan Simpson:** Now, this is the point where the stories of Ronnie and the officers diverge, and it's an important divergence because the search of the Long family car produced most of the evidence against Ronnie other than Juddy Bost's identifications. And, if Ronnie didn't consent to the search, the evidence recovered from that car would have been inadmissible against him based on the Fourth Amendment. In fact, the defense would later make a motion to suppress this evidence based on lack of consent.

But the lead detective, Detective Vogler, would give a different story than Ronnie did on consent. According to his testimony on direct examination, "I don't know whether I could say exactly what [Ronnie] said, he gave us consent, said he didn't mind us searching his car. I don't know that that's the exact words he used or not. He gave us consent." This then led to the following exchange on cross-examination:

**Rabia Chaudry (reading from transcript):**

Lt. Volger, when you say Ronnie Long gave you permission to search the car, where was he in the police station?

**Colin Miller (reading from transcript):**

In the visiting agent's office.

**Rabia Chaudry (reading from transcript):**

Was his father present?

**Colin Miller (reading from transcript):**

No, he was not present.

**Rabia Chaudry (reading from transcript):**

Was anybody present other than you?

**Colin Miller (reading from transcript):**

I believe Sgt. Taylor was in there at the time.

**Rabia Chaudry (reading from transcript):**

Why do you not use consent to search forms at the police department?

**Colin Miller (reading from transcript):**

Just never had one. I don't know why.

**[6:57] Susan Simpson:** The subject of "consent to search" forms is interesting. The most comprehensive study of those forms was done by Nancy Leong and Kira Suyeishi in their 2013 article, "Consent Forms and Formalism." After speaking with officials in all fifty states, they determined that police departments in "[o]nly four states do not use consent forms and rely only on verbal consent." North Carolina is not one of those four states, although clearly at least some North Carolina police departments did not use such forms in 1976.

But even then, for the police department to rely on oral consent was anomalous because the article notes that between the Supreme Court's 1966 opinion in Miranda and its 1973 opinion in a case called Schneckloth, written consent forms had "become an integral part of police culture." And it's easy to see why: The article cites a popular treatise targeted at law enforcement officials, which states: "As the burden of proof is on the prosecution to show that the consent was given voluntarily, this consent should be obtained in writing when possible and should be witnessed by more than one person."

That wasn't the case here, so we're left with Ronnie's word against the words of the Concord Police Department, which searched the Long family car, and whether they had consent. Here's Ronnie describing the aftermath of that search:

**Ronnie Long:**

They got the warrant stalled up and David Taylor & Marshall Lee come back in... the Magistrate Office- with my jacket and uh my gloves, they had got em from up over my, uh, sun visor.

**[8:30] Colin Miller:** So, let's break down all of the evidence that the police say they recovered from the Long family car. First, over the sun visor of the passenger side seat, the police found black leather gloves. Now, as you might recall, Bost said that her assailant might have been wearing gloves. Specifically, the notes of her first police statement read as follows: "Subject was wearing a dark, waist length leather jacket, blue jeans, with a dark toboggan pulled low on his head, could possibly have been wearing gloves." So, given that Bost was unsure about whether her assailant was even wearing gloves, this evidence doesn't seem too helpful...at least at first blush.

The second piece of evidence that the police recovered was a black leather jacket, although it's unclear whether Ronnie was wearing the jacket or whether it was in his car. As we just noted again, Bost said that her assailant was wearing a black leather jacket. According to Ronnie's good friend Terrance Stocks, that jacket was actually his:

(phone ringing)

**Terrence Stocks:**

Hello?

**Colin Miller:**

Hi, this is Colin Miller calling for Terrence Stocks?

**Terrence Stocks:**

Yeah, who is this?

**Colin Miller:**

I'm calling because I'm doing a podcast on the Ronnie Long case, and I'm trying to find the TS who knew him back in 1976.

**Terrence Stocks:**

Okay.

**Colin Miller:**

So you were a classmate of Ronnie Long's in high school?

**Terrence Stocks:**

Classmate and good friend.

**Colin Miller:**

And how would you describe Ronnie?

**Terrence Stocks:**

Ronnie, um, was an upbeat guy. We all ran together, so, yeah, that's what I'm saying, you know, it was cool. Matter of fact, uh, the evidence that they have as far as the jacket, that's my jacket!

**Colin Miller:**

So you guys traded jackets back in 1976?

**Terrence Stocks:**

Yeah! '75, '76, yeah. We traded jackets, yeah. And when he was arrested, that was my jacket he was wearin'.

**Colin Miller:**

Do you know when you traded jackets?

**Terrence Stocks:**

We traded jackets durin' that year, because he had a black LTD Ford, and the jacket was black, I had a, uh, a green El Dorado, and he had a green patchwork brown type jacket that he, we traded. I bought that jacket when I was in the military in Germany.

**Colin Miller:** Now, this is interesting, but probably not for the reason you might expect. Ronnie acknowledges that he had exchanged jackets with Terrance before the assault, so there's no question about whether Ronnie had the jacket at the time of the assault. The interesting thing is that it turns out that Terrance's wife is now the Deputy Chief of Police of the Concord Police Department, the very same Police Department that Ronnie Long has been fighting for over four decades.

Now in terms of the relevance of the jacket, I guess it's a judgment call. Obviously, Bost picked Ronnie out of the photo array in part based on the jacket, which means it likely looked similar to her assailant's jacket. That said, from testimony and images of the jacket, there's nothing distinctive about it that would distinguish it from many other black leather jackets.

There was also some other evidence that the police recovered from the Long family car. You might recall that the police recovered partially burned matches by the banister at the front of the Bost residence, which they believed the assailant used to light his way in the dark. The police recovered five matchbooks from the floorboards of the Long family car, and Lieutenant Vogler would later testify as follows at trial:

**Rabia Chaudry (reading from the transcript):**

The matches we found at Mrs. Bost's had, well, one side was, to my recollection, was sort of a blue on one side, and maybe natural grayish color on the other side, and the matchbooks we found in the car contained the same type of match.

**Colin Miller:** In other words, according to Vogler, there's a solid chance that the matches from the crime scene came from one of these matchbooks, which I could imagine finding reasonably compelling as a juror.

**[13:34] Rabia Chaudry:** This then leaves us with the infamous toboggan. Again, you might recall that Bost said her assailant was wearing a dark toboggan. The police say that they recovered a green toboggan from under the driver's seat of the Long family car. Ronnie has always maintained that the toboggan wasn't his, and that he had never seen it before the officers showed it to him. The most interesting thing about the toboggan is that it has hairs in it that don't appear African-American and instead appear to be reddish. Over the years, Ronnie has been unsuccessful in seeking testing of these hairs. Colin asked Ronnie's attorney Jamie Lau about the toboggan:

**[14:12] Jamie Lau:**

Prior counsel for Mr. Long had sought testing of hairs in that toboggan that don't appear to be the hairs of Ronnie Long. The issue is that that toboggan had been placed on [heads and] handled during, um, during the course of trial. Ronnie, of course, has never seen the toboggan prior to trial; it's not Mr. Long's toboggan. He's said that since the very beginning of the case. Um, given the fact that it's not his toboggan, it's not unexpected that they're are hairs there that don't necessarily appear to be that of an African-American male. But, because of the

handling during the course of trial, the court has not allowed for DNA testing to go forward with respect to the hairs in the toboggan to identify those hairs. Interestingly, of course, is the fact that Mr. Long has acknowledged that the gloves, the jacket, the evidence collected in this case were items of his, yet the toboggan, he consistently has denied ever seen. Um, to the extent that he would be trying to suggest that, um, items were not necessarily his, he could have denied ownership of gloves collected from the car as well. You know, it's the toboggan that he's never seen before. I mean, I don't know what to say about the hairs other than they're hairs and they're not an African-American male's hairs, but the court won't let us test to identify who those hairs may belong to.

**[16:04] Rabia Chaudry:** The toboggan is an especially sore subject for Ronnie:

**Ronnie Long:**

The green hat, the green toboggan they say they took out of my car... They say they took it out of my car. It was in their possession, you understand what I'm saying? They insist they took it out of my car. The woman did not say anything about a green toboggan. The woman said a "dark color" toboggan. They got a lime green hat there. The lime green hat, and the whole time I'm telling my lawyer, "that ain't my hat! I ain't never seen that hat before!" You understand? But yet, it's true when my lawyer turned it inside out, he turned it inside out, trial transcript, page 310, you understand what I'm saying? Sargent Taylor said that he saw light colored hair in the toboggan. Ok, we tried to get the hair in the toboggan DNA testing. Ok, but the Superior Court judge, he gonna try to make a statement about, uh *your lawyer, he put the hat on his head -- that contaminated the hat*. OK, get the lawyer's DNA! Get the lawyer's DNA, you understand what I'm sayin'? His DNA show up in the hat? Then get his DNA and compare it with the other DNA that's in the hat! The main issue is the thing right here -- we were trying to prove that the hat didn't belong to me and that it wasn't my DNA in the hat, but they refused to let me do that because they told my lawyer "they ain't going on no fishing expedition." Come on man.

**[17:26] Rabia Chaudry:** Now, there are a few other important things to note about the toboggan. The first is that several witnesses, both friends and family, say they had never seen Ronnie with the toboggan. One of those family members is his sister Lynda:

**Colin Miller:**

At trial they said they had recovered this green toboggan from the car, and said that that was the toboggan worn by the person who committed this crime. Had you ever seen Ronnie with a toboggan?

**Lynda Long:**

No, Ronnie didn't have that toboggan. He didn't even own that toboggan!

**[17:55] Rabia Chaudry:** And one of those friends is Terrance Stocks:

**Colin Miller:**

They said that he committed this crime while wearing a toboggan, and I think you testified at trial that you didn't remember ever seeing him wear a toboggan?

**Terrance Stocks:**

Uh, I think that toboggan was green wasn't it?

**Colin Miller:**

Right.

**Terrance Stocks:**

Yeah and, uh, there was a...they said something about a testimony about a different colored hair, a sandy colored hair in that toboggan?

**Colin Miller:**

Right

**Terrance Stocks:**

If I'm not mistaken, yeah.

**Colin Miller:**

And you don't remember ever seeing Ronnie wearing anything like that, right?

**Terrance Stocks:**

No, no. Most of the time, uh, it was more of a cap or a hat, like, you know?

**[18:32] Rabia Chaudry:** Ronnie's recollection of the type of hat he used to wear in 1976 matches up with Terrance's recollection:

**Colin Miller:**

What was the type of hat that you did wear back in 1976?

**Ronnie Long:**

Leather looking baseball cap. Used to wear leather looking caps. I used to wear a leather cap, you understand what I'm saying? It looked like a little chauffeur's cap. Then I used to wear the leather looking baseball cap. We had a brown leather cap that we would wear, like baseball cap. Those were the kind of caps I used to wear then.

**[18:57] Susan Simpson:** At trial, the defense would introduce a leather chauffeur's cap into evidence, and several witnesses identified it as the cap that Ronnie wore in 1976 and indeed even on the day of the assault. One of those witnesses again was Terrance Stocks, who, as we'll explain in more detail later, saw Ronnie with the chauffeur's hat both a couple of hours before and a couple of hours after Juddy Bost was assaulted.

But, another thing to reiterate about the car is that it wasn't Ronnie's car. It was his mother's:

**Elizabeth Long:**

That was my car. I bought that car.

**Susan Simpson:** And, as Ronnie's wife likes to stress, this means it was a shared car:

**AshLeigh Long:**

Ron's father and his brothers, um, all drove that vehicle.

**Susan Simpson:** Therefore, it's possible the toboggan came from any number of passengers while any number of different people were driving the car.

After the Concord Police collected these items, Ronnie was arrested and taken to Kannapolis for arraignment the next day. He still has a visceral memory of this, nearly 42 years later, as can be seen in this recorded call that he did with his wife:

**[20:04] Ronnie Long:**

They take me to Kannapolis, North Carolina, for arraignment. First thing Tuesday morning. While I'm sitting in the holding cell in Kannapolis...

**AshLeigh Long:**

In the basement.

**Ronnie Long:**

That night, I felt as though we were like, underground in a basement or something 'cause it was real damp. You could smell a lot of like mold, mildew. While I'm in the holding cell, Van Eisenhower, who was the, uh, evidence custodian for Cabarrus county, Concord police department, he come in with a pair of brown boots, drop 'em on the floor in front of me and tell me he needs the shoes that I got on.

**AshLeigh Long:**

Well them them what he said to you.

**Ronnie Long:**

I told him that them shoes aren't mine. I don't know whose shoes them are. I kicked the shoes out in front of me. He told me, he get the shoes one way or another - easy way or the hard way, either way it goes, I'm leaving here with the shoes. I stood up, told him, ok, come and get 'em! He looked back outside the door and call in two sheriffs - both of them looked like they weigh about 300 pounds [AshLeigh laughing]. Me being from Concord, 8 miles from Kannapolis, I've heard the rumors, about what happens to people, in North Kannapolis, especially blacks. I'm not gettin' ready to be a victim. So I sit down and take the shoes off.

**[21:32] Susan Simpson:** As we'll explain when we get to the trial, these shoes are the last piece of evidence that the State had against Ronnie Long. Ronnie was next arraigned for first-degree burglary and rape, and he was taken back to Concord. Soon thereafter, he was offered a plea deal, and it might be an indication of the strength or weaknesses of the State's case against him:

**Ronnie Long:**

A day or so later, a lawyer named Johnson, who my father had retained to represent me, came to me, with my father, and told me that the DA were offering me seven years for a guilty plea. He told me that I would be out of the penitentiary within three.

**[22:12] Susan Simpson:** Ronnie could have taken the plea deal and gotten a seven year sentence and only around three years of actual prison time if he'd simply plead guilty. But anyone who knows Ronnie, knows this isn't something he'd ever have done:

**Ronnie Long:**

The offered my a seven year plea for a guilty plea - seven years. Said I'd be back home in three years. But dad looked at me and told me, said hey now, well wait -- I didn't raise y'all to admit that y'all did something when you didn't do it. So I didn't take the plea. I went to trial.

**[22:46] Colin Miller:** To understand the gravity of this decision, we need to go back in time, all the way back to the antebellum South. At the time, there were two sentencing schemes in many southern states for the crime of rape, and that led to oral arguments before the United States Supreme Court in 1972 when a man named William Henry Furman challenged Georgia's current sentence of capital punishment for rape:

**William Henry Furman:**

Uh, before the Civil War, in the state of Georgia there were two sets of statutory sentences for the crime of rape. Uh, if a slave or a free person of color raped a white woman, he would get the death penalty. Uh, any other rape was punishable by a term of 1 to 22 years. After the Civil War, the statutory of sentences on the books in the state of Georgia was repealed, uh, and the offense, well essentially the statutory scheme that we had at this point was reenacted, uh, to take its place. And we have all these statutes, that are quoted, verbatim, in the appendix at the end of our brief. Uh, and uh the discretionary death penalty for the crime of rape was enacted into Georgia law. And what is happening in the administration of the statutes, uh, this discretionary statute has been essentially, uh, what was required under the particular language at the Georgia legislation that existed prior to the civil war.

Looking at, uh, capital punishment in general, that is for the crime of rape and the crime of homicide, we find that while it is authorized for one person to another in most of the state, it is in fact almost never applied, except in random unstandardized, random unstandardized ways, against the poorest, the least educated, and disproportionately, against racial minorities.

**[24:32] Colin Miller:** Concluding that imposition of the death penalty was both arbitrary and discriminatory, the Supreme Court placed a moratorium on the death penalty in 1972. Defendants could still be sentenced to die, but those executions couldn't be carried out until the states came up with a fairer system. In response, some states like North Dakota repealed their death penalties. Other states tried to create better

sentencing schemes to enable jurors to apply clear criteria in choosing between life and death.

Meanwhile, North Carolina doubled down, finding a unique way to insulate its death penalty from claims that it was arbitrary and discriminatory: It made the death penalty **mandatory** in cases of first-degree murder and first-degree rape. As a result, North Carolina's death row population swelled to 120, the largest in the nation. When Ronnie Long turned down a deal that would have him out in about three years, he did so while believing that a conviction for a rape would cost him his life.

He also did so knowing that this was going to be a high profile case. Again, here's Ronnie's wife:

**AshLeigh Long:**

And, during the time that Ronnie was on trial, or, sorry, awaiting trial, there was actually rioting and protesting going on in Concord, uh, so much so that the city enforced a curfew, and the National Guard was brought in...

**[25:53] Rabia Chaudry:** One article from the summer notes that “[a]n estimated crowd of 300 persons consisting mostly of persons under 22 years of age assembled in front of the Cabarrus County Courthouse...to rally in support of Ronnie Wallace Long...Only a smattering of whites joined in the march. Police estimate that around 75 persons joined in the march as the demonstrators moved through the predominantly black section of Concord...Occasionally breaking into choruses of ‘We Shall Overcome,’ the demonstrators were chanting ‘free Ronnie Long’ and ‘We’re people united -- we’ll never be defeated.’” The article cites one protester as saying that this was the biggest demonstration he’d seen in such a case and a speaker informing the crowd of what he termed “Klan style justice.”

This wasn't a hyperbolic claim. As we noted in the first episode, the victim in this case, Juddy Bost, was the widow of an executive accountant at Cannon Mills, the textile company that was the main employer in Cabarrus County. Given this fact, you might imagine that Ronnie's lawyer would have moved to transfer venue to another county. But one of Ronnie's trial lawyers would later testify that he didn't make such a motion because the alternative was Rowan County, which had a large Cannon Mills plant and was known for “some pretty heavy Klan activity.”

So, the trial took place in Cabarrus County, which created some problems because it was effectively a company town. Here's Ronnie's wife talking to students at Winston Salem State:

**AshLeigh Long:**

And Cannon Mills, like, literally, like basically the world's largest producer of towels, until they sold the Mills, which was like 2008, so I mean, essentially, like, we all would use towels that came out of there, definitely your parents and everything, um, I mean, they actually incorporated the city of Kannapolis, which is right next to Concord, they actually created the city of Kannapolis, there's a whole bunch of millhouses, I mean, the police used to go pick up their checks from the plant, I think it was Plant 2, in Kannapolis.

**[27:36] Rabia Chaudry:** Indeed, at a hearing after trial, one of Ronnie's trial attorneys would testify that there was a "real or perceived feeling that Cannon Mills ran" the county and it would have been "difficult to keep those kinds of feelings out of...[the] courtroom."

**[29:55] Susan Simpson:** So, as Ronnie's case hurtled toward trial, the deck looked pretty stacked against him, although he finally did catch one break. North Carolina's hubris in making the death penalty mandatory for certain crimes came back to bite it. On July 2, 1976, the United States Supreme Court issued its opinion in Woodson v. United States. In Woodson, James Tyrone Woodson had been drinking heavily when Luby Waxton and Leonard Tucker arrived at his trailer. According to the Supreme Court's decision, "When Woodson came out of the trailer, Waxton struck him in the face and threatened to kill him in an effort to make him sober up and come along on [a] robbery."

Fearing for his life, Woodson came along but remained in the car with a 4th man as lookouts while Waxton and Tucker entered an E-Z-Shop. Once inside, Waxton asked for a pack of Kool cigarettes, but, as the cashier approached him, he pulled out a nickel-plated derringer and fatally shot her before emptying the cash register. Based on his involvement in the crime, Woodson was convicted of first-degree murder and given the mandatory sentence of the death penalty. In the summer of 1976, the Supreme Court deemed that sentence unconstitutional. Here's a clip from a WRAL story on Woodson and his case:

**[30:50] News Reporter:**

James Woodson was sentenced to die for a store robbery in 1974, even though

he never got out of the getaway car. Under North Carolina's old law, he was given a date with the electric chair. In 1976 the US Supreme Court struck down North Carolina's law, sparing Woodson's life, and 120 others.

**James Woodson:**

I praise God, how you doing?

**News Reporter:**

17 years after the ruling, Woodson was free.

**James Woodson:**

Praise God, how you doing? After 18 years of incarceration, someone tells me that I'm going home.

**News Reporter:**

Woodson admits it was not easy on him, or his wife.

**James Woodson:**

I thought I was going home, as a husband. But, I actually went home, you can say, as her son, because she had to help me to re-adjust.

**News Reporter:**

WRAL first met James Woodson 11 years ago. He was the kitchen manager at the Raleigh Rescue Mission. These days, he has a job in Raleigh, and preaches to inmates at Wake Correctional Center. He's also watching the latest court case, involving 27 inmates, the lead plaintiff in the dispute, Bobby Bowden, is one of the inmates whose life was spared by the James Woodson decision, in 1976.

**[32:18] Susan Simpson:** Ronnie Long was another one of those inmates who had his life spared by the Woodson decision. He was no longer eligible for the death penalty, but his charge of first-degree rape and burglary now carried mandatory life sentences, which, under North Carolina law, meant 80 years for each crime.

Under this new North Carolina system, jurors still wouldn't be deciding Ronnie Long's sentence, but they would be deciding his guilt or innocence. North Carolina, though, had another law in place at the time, and it's one that raises a whole host of different questions about the jury who would decide his fate:

**Ronnie Long:**

Solely 3 people at the County Commissioner's Office, are supposed to compose jury pool for jury duty. Prospective jurors for jury duty. I got documentation to prove that the \*\*attorney, down to the County Commissioner's office, and took the master list, of prospective jurors, and started deleting names from the list, saying that he knows these people personally. I have documentation to prove this! That he deleted names from the master list, of prospective jurors of jury duty on my case.

**[33:41] Colin Miller:** Ronnie's right: He does have documentation to back up this claim. And here's what it shows. Typically, jury selection works as follows: Some body, in this case the jury commission, creates jury rolls or jury venires based upon things like property records, voter records, or DMV records. The jury roll or jury venire is the master list of prospective jurors in a given case. Then, in open court, both the prosecution and the defense are entitled to make two types of challenges, or strikes, to prospective jurors. The first are unlimited "for cause" challenges based upon prospective jurors being statutorily unqualified to serve because, for instance, they don't live in the relevant jurisdiction, they are connected to one of the parties, or they have pre-existing prejudicial knowledge about the case. The second are peremptory challenges, which are a limited number of challenges that can be made without providing a reason and might be based upon things like thinking a prospective juror's job makes her more likely to be pro-prosecution or pro-defense.

But in the Ronnie Long case, there was an initial filter before the defense ever got to see the jury venire. Here's Ronnie' attorney Jamie Lau explaining the process in more detail:

**[34:43] Jamie Lau:**

The jury roles, through which the jury pool was selected, were first taken to the county Sheriff, and potentially the police department as well- there's another case in North Carolina from about the same time where the Police Chief had also made a pass through the jury roles. And, the law enforcement officers who were able to take a pass through the jury roles, used a red pen or pencil and struck through whatever jurors they deemed unfit for jury service. There was a statute in place at the time that identified what would disqualify individuals for jury service so conceivably they could be striking through the names on the basis of permissible reasons under the statute, but there's no way in which to determine how law enforcement officials were striking names. What we know is they had

gone through the list and struck potential jurors from the jury pool prior to the pool being called.

**[35:52] Colin Miller:** Simply put, this is an extremely unorthodox practice you're unlikely to find authorized anywhere today or even anywhere other than North Carolina back in 1976. It's tough to even find something analogous in a single other case. All I could find was one case out of Georgia in which a sheriff was allowed to strike five prospective jurors. In finding this behavior unconstitutional, the Supreme Court of Georgia ruled in 1983 that:

The excusal of five prospective jurors by the sheriff, as the chief law enforcement officer in the county and as a direct participant in the trial, is a violation of the integrity of the jury selection process, and constitutes an alteration of the array of traverse jurors to such extent as to deprive this defendant of her proportional share of peremptory strikes.

Of course, this case was a "one off" and not a codified law like the one in the Ronnie Long case. At least in most cases, North Carolina defendants were able to check the homework of the sheriff and see the names of the prospective jurors who were struck. But that wasn't true for Ronnie Long:

**[36:43] Jamie Lau:**

The chairman in charge of the jury rules testified at trial that he can't produce the list and the individual jurors who had been struck from that list because he recently had moved offices and couldn't find the list, which raises a great deal of questions about who was struck from the jury rolls by these law enforcement officers prior to the jury pool in Ronnie's case ever being called for jury duty. Of course, you're entitled to a jury that's a representative cross-section of the community, and if those jurors were struck from the rolls for any reason other than permissible reasons under the statute, then Mr. Long's rights were violated even before his trial began.

**[37:33] Rabia Chaudry:** It's easy to imagine how this "dog ate my homework" excuse could have hidden something nefarious by returning to Georgia for a more recent case. In Foster v. Chatman, Timothy Tyrone Foster appealed his convictions for murder and burglary and was able to get the prosecutor's list of jurors that he struck. Here's Chief Justice Roberts explaining what Foster found and how it meant the Court had to rule:

**[37:57] Chief Justice Roberts:**

In this case however we have a copy of the file used by the prosecution during jury selection. That file contains the following documents. First: lists containing the names of each prospective juror. The names of the black prospective jurors are highlighted in bright green, with a notation that green highlighting “represents blacks”. Second: a list titled ‘Definite Nos’. That list contains six names, including the names of each black prospective juror. Third: a typed document stating that “if it comes down to having to pick one of the black jurors” one particular one might be acceptable. Fourth: handwritten notes identifying three black prospective jurors as B#1, B#2, and B#3. Fifth: questionnaires filled out by several black prospective jurors. On each the prospective jurors race is circled. And sixth: a handwritten document containing the following note: “No, no black church”, referring to the church to which one of the prospective jurors belonged. The word ‘black’ is underlined. Now in light of the documents in the file, and our independent examination of the record, we conclude that the prosecution’s purportedly race neutral reasons for striking at least two of the black prospective jurors, Marilyn Garrett and Eddie Hood, were pretextual, and that the strikes were instead based on at least, in at least substantial part, on racial discrimination.

**[39:33] Rabia Chaudry:** Now, of course, you might say that it’s unfair to ascribe prejudicial motives to the sheriff in this case. But what seems far fairer to say is that bias, both unconscious and conscious, comes into play whenever you give largely unbridled discretion to someone who clearly has a stake in the outcome of a case. In this regard, it’s important to note that the sheriff was given authority to strike prospective jurors on two counts: First, if they were unqualified. And, second, if they fell into another category: The title of that category? The “undesirable.” Here’s the Jury Commission Chairman describing how the sheriff or chief of police determines whether a prospective juror is “undesirable”:

**[40:12] Susan Simpson (reading question):**

Do you know what standard is applied by the Sheriff and Chiefs of Police in determining who is undesirable as opposed to who is legally disqualified?

**Colin Miller (reading answer):**

Well, as far as I know the Sheriff and the Chief are well qualified to determine whether a person is desirable or undesirable.

**[40:25] Rabia Chaudry:** And...that’s it. So, imagine you’re the sheriff and you’ve been given a jury roll with the names of people who have spoken against police misconduct,

people who have spoken in favor of civil rights, law-abiding citizens who would generally seem more inclined to favor the defense than the prosecution. Would you be able to resist the temptation to stack the deck in the favor of the State?

Because the original list with the red marked names is lost to time, we'll never know what the sheriff did in the Ronnie Long case, and here's the thing...neither did the trial judge. And what that means is he shouldn't have taken the State at its word and should have quashed the venire and started the jury selection process all over again. But he didn't, and that then takes us to what we know did happen.

**[42:30] Susan Simpson:** There were only four prospective African-Americans called to the jury box to be questioned jury selection and all four of them were struck by the prosecution. And, if you're wondering whether the defense questioned these challenges on Equal Protection grounds, this was a decade before the Supreme Court even recognized that this was a viable issue in the case of Batson v. Kentucky. And so, Ronnie Long ended up with a jury of 12 white jurors and one white alternate juror despite the fact that Cabarrus County was about 15% African-American at the time. According to Ronnie Long, the jury selection process and the resulting jury was inconsistent with his right to a fair trial:

**[43:02] Ronnie Long:**

The deck was stacked against me, man. It was stacked against me from the day 1. There ain't no sheriff got no business taking names of off jury lists. I end up with 13 whites. You know what they say - those jurors are your peers.

**[43:20] Susan Simpson:** Ronnie Long's belief that an all-white jury prevented him from receiving a fair trial is backed up by empirical data. Colin spoke with Patrick Bayer. He's a professor of economics at Duke who did a study of the effect of all-white juries on trials over a 10 year-period:

**[43:34] Patrick Bayer:**

When it's an all white jury pool you get about, you get about an 18% gap, so blacks defendants are convicted about 18% more often than whites. And even with just some representation in the pool, not even necessarily on the case itself, you may actually get, have conviction rates that are slightly higher for white defendants in that case. So you get this huge change in the outcome of the case just based on randomness of who's, who's in the jury pool, you know, who's hot for jury duty that day.

**[44:02] Colin Miller:** So, let's break that down. Professor Bayer studied data from jury trials in Florida over the course of a decade. When there was even one African-American juror in the jury pool, the conviction rates for Caucasian and African-American defendants were similar; in fact the conviction rate for Caucasian defendants was 2% higher. But when there were no African-Americans in the jury pool, the conviction rate for African-Americans was 18% higher than it was for their Caucasian counterparts. And, according to Professor Bayer, this same gap exists when there are no African-Americans on the jury selected from that jury pool, which was what happened in the Ronnie Long case:

**[44:34] Patrick Bayer:**

In the raw data, you can kind of, you know, there's a similar effects for the seated jury as well, so if you were just to look at, you know, compare the trials with, like basically, you know, over 80% of the trials it's an all white jury pool, and then you were to compare those trials with the ones where there's a black member of the jury, you get kind of big effects for those as well.

**[45:00] Susan Simpson:** Finally, there's one last thing to note about the jury in the Ronnie Long case, and it's quite possibly even more important than its racial composition:

**[45:08] Ronnie Long:**

Four of the jurors worked for Charles A. Cannon, who employed the victim's husband who was an executive accountant for Charles A. Cannon. So it was also rumored that Charles A. Cannon offered a \$10,000 reward for information leading up to an arrest.

**[45:36] Colin Miller:** Breaking that down, three of the twelve jurors in Ronnie Long's case were currently employed by Cannon Mills, and a fourth was married to a current Cannon Mills employee. That's a third of the jurors connected to Cannon Mills, and imagine being in their shoes. There was a real or perceived belief that Cannon Mills ran the county and a belief that Charles Cannon was offering money for information leading to the arrest of the man who had raped the widow of his former executive accountant. The case was dominating the headlines of the papers, and there were marches through Concord's streets throughout the summer. If you were a juror employed by Cannon Mills or married to a Cannon Mills employee, would you have been willing to be the holdout, the one thing preventing the person accused of that crime from being convicted?

And what if the accused had an alibi, a good one that covered not just the time of the crime, but the entire day? Next time...on Undisclosed.

**[46:49] Rabia Chaudry:** Thanks so much to all of you for tuning in this week and we have a whole host of other people to thank for making this season possible, as they do every season. First of all, thank you to our sponsors for helping to bring us back week after week. Thank you Baluki, for designing our logo. Thank you Christie, for maintaining our website. Thanks so much Mital Telhan, our amazing executive director. And a big thanks to Mr. Henry LaVoie, for helping with research for this series. And if that name sounds familiar, it should be! Because he's the son of our awesome audio producer Rebecca LaVoie, who is not only our audio producer but also the host and producer of the fantastic podcast Crime Writers On, which I don't miss, any week. Don't forget to follow us on social media, our Twitter handle and Facebook is @undisclosedpod. And if you have questions for the addendum, don't forget to get Mr. Jon Cryer's attention, and our producers, by tagging them with #UDaddendum. Thanks so much. Until next week...

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