

1 resumed at 9:30 a.m. April 3, 2009.

2 **APRIL 3, 2009**

3 THE COURT: All right, court will be in session.

4 Are we going to start with Greg?

5 MR. HOLT: Yes, sir.

6 THE COURT: Come on, Greg. You were previously
7 administered the oath. Do you understand that you're
8 still under oath?

9 THE WITNESS: Yes, sir.

10 THEREUPON,

11 GREG CROW

12 was recalled as a witness by and on behalf of the State/
13 Respondent and having been duly sworn, was examined and
14 testified as follows, to-wit:

15 CROSS-EXAMINATION

16 BY MR. HOLT:

17 Q] Good morning, Mr. Crow.

18 A] Good morning.

19 Q] I just have a few quick questions of you. Yesterday Mr.
20 Stidham identified what's been marked as State's Exhibit #12 and
21 then there are specific documents that are marked 12A through P
22 and Mr. Stidham is going to identify this specifically, but do
23 you recall looking at that file and is that a file of certain
24 memos and attorney notes that were collected by you and Mr.
25 Stidham?

1 A] (Witness examining same.) Yes, sir, it appears - - I
2 haven't seen it in fifteen years, but it appears to be the file
3 that we had at the office for the Misskelley matter.

4 Q] Okay. And you initialed those particular handwritten notes
5 that were in your handwriting?

6 A] Yes, I did, but up until last week, I had not seen them and
7 yes, I went through them in your presence and initialed certain
8 things that were in my handwriting. - Yes, sir.

9 Q] Okay. And I believe in your earlier testimony you
10 testified that, or confirmed the fact that Mr. Stidham was the
11 main attorney in this case and that you seconded him and he was
12 responsible for most of the work in the case, and that you
13 essentially "kept the doors of the office open"?

14 A] That's correct.

15 Q] I show you something that's been marked as State's Exhibit
16 #7, and ask if you can identify that?

17 A] (Witness examining same.) It appears to be a - - that's my
18 signature here. It's a letter from me to Jessie Misskelley, Jr.
19 dated February 21, 1994.

20 Q] Okay. And what is the substance of that letter?

21 A] Give me a few more minutes.

22 Q] Sure.

23 (Pause.)

24 A] It was on whether or not he should - - this is post-
25 conviction, on whether or not he should agree to testify in the

1 second trial against Damien and Jason.

2 Q] And in that letter, what did you - - did you advise him one
3 way or the other in that letter, or did you set out what his
4 options were?

5 A] I set out options and talked about the pluses and minuses,
6 uh, of testifying; about how he should - - uh, about whether
7 there was actual guilt or innocence, uh, the effect on the
8 appeal, uh, the fact that we were going to ask for a new trial
9 based on new evidence and, uh, and also of course, the fact that
10 on the positive side for him it would be great to testify, that
11 he would get some kind of reduction in sentence.

12 Q] I see. Do you recall immediately prior to trial there
13 being an offer made by the prosecutor?

14 A] Prior to trial, prior to Jessie's trial?

15 Q] Yes?

16 A] Yes, I do.

17 Q] Okay. And what was it?

18 A] If I recall correctly, and you know, it's been a long time,
19 if I recall correctly it was forty years, and the prosecutor
20 would not object to parole when it came up.

21 Q] I see. Do you know if that was on the record, or not?

22 A] I do not believe that it was. And Joe Calvin is the one
23 who came in and made the offer in Clay County, uh, and I don't
24 believe anything was on the record, if I recall.

25 Q] I'm not trying to trick you.

1 A] Okay. I think it was the first morning before we started
2 selecting the jury, if I recall. I'm pretty sure it was the
3 first morning before testimony - - but I'm pretty sure it was
4 the first morning before we started trying to select the jury.

5 Q] Was there an offer before that?

6 A] Well, early on back in the summer, maybe even as early as
7 late September, but I think it was before that, there had been
8 an offer of taking the death penalty off the table.

9 Q] Okay. I see it. I'd like to show you a transcript of the
10 trial, and just see if this might refresh your memory and what
11 I'm showing you is part of the trial transcript in the record,
12 which is part of this hearing. And if you would just peruse
13 that?

14 (Pause.)

15 A] Okay. Fifty years, okay. It appears the offer was fifty
16 years, not forty.

17 Q] That refreshes your memory?

18 A] It's what the record is, what the record is. I'm sure
19 that's correct.

20 Q] And pursuant to that, I mean, also, the judge in fact
21 inquired as to whether or not that would have been explained to
22 Mr. Misskelley?

23 A] I do recall discussing the plea offer with him; yes.

24 Q] Did he appear to understand what you were talking about?

25 A] Yes.

1 Q] Let's go back now to the letter that you wrote and you said
2 that was February 21st?

3 A] Yes, sir.

4 Q] We have a tape recording that we'd like for you to identify
5 and this is a taped telephone conversation that appears to be
6 post-conviction, but pre-trial for the two other defendants.
7 Have you listened to that?

8 A] I've got a transcript - - I've read the transcript. I've
9 not physically heard the tape.

10 Q] All right. Then we'll start playing the tape, would you
11 indicate whether or not that's you in that?

12 A] I'm sure it is.

13 Q] Okay. We'd like to play that. Do you have the transcript
14 up there?

15 A] No, I do not.

16 (WHEREUPON, the phone conversation was played in open court as
17 follows, to-wit:)

18 (Unidentified voice: "Testing 1, 2, 3,")

19 CROW: Jessie?

20 MISSKELLEY: Yes.

21 CROW: How you doing?

22 MISSKELLEY: Pretty good.

23 CROW: Good. This is Greg. Did you have a good weekend?

24 MISSKELLEY: Pretty good.

25 CROW: They let you get out in the yard or anything?

1 MISSKELLEY: Huh?

2 CROW: They let you outside in the yard or anything?

3 MISSKELLEY: No.

4 CROW: No, not at all? Well, sorry about that. You got plenty
5 of clothes and everything?

6 MISSKELLEY: Huh?

7 CROW: You got plenty of clothes?

8 MISSKELLEY: No.

9 CROW: No, we'll see about getting you some more. They got you
10 back in the oranges, or letting you wear your street clothes?

11 MISSKELLEY: Orange.

12 CROW: Okay. I guess you're all right then. Uh, I hadn't
13 talked to you since we were down at the prosecutor's office on
14 last Thursday. I, I'm not sure what all's happened since then,
15 but if I come down and talk to you are you going to talk to me?

16 MISSKELLEY: I don't know.

17 CROW: Why not? What's going on? Are you mad at me, or some-
18 thing, or...?

19 MISSKELLEY: Yeah, I'm mad at y'all.

20 CROW: What are you mad at me about?

21 MISSKELLEY: Well, I, I, I don't know.

22 CROW: That's okay, bud. I mean, you're all right. I just
23 wanted you to talk to me. I'll...

24 MISSKELLEY: Dan called me a horse, called me stubborn
25 (inaudible) put handcuffs on me and then you know, that ain't

1 gonna work with me. You know? He thought I asked him to quit,
2 he was getting me mad, he asked me what I was going to do and I
3 told him he kept up and he'd find out. So, you know, he's got
4 me mad.

5 CROW: Well, sometime...

6 MISSKELLEY: You know, that don't work for me, hollering at me
7 like that.

8 CROW: I know that.

9 MISSKELLEY: I been having it all my life and I'm not going
10 through with it again.

11 CROW: I understand that. Sometimes you and Dan are both on the
12 stubborn side sometimes and, uh, I want you to understand one
13 thing is Dan was not mad at you, Dan was mad at the prosecutor.
14 He yelled at me that night, and he yelled at his wife that
15 night. He yelled at everybody that night. He was just mad at
16 the prosecutor because he was screwing him around. He wasn't
17 mad at you.

18 MISSKELLEY: Well, he didn't have to take it out on me, either.

19 CROW: Well, he did the same thing to me and I kicked his ass
20 for both of us, okay?

21 MISSKELLEY: All right. Well, I ain't, you know, I just don't
22 want to talk to him no more.

23 CROW: Well, will you talk to me?

24 MISSKELLEY: I don't know.

25 CROW: Well, that's (inaudible) line. I'll give you hell the

1 next time I see you, too. I like you and you know that. No
2 matter what happens with this deal, I like you. And you may not
3 like me. If you don't, that's okay. I like you anyway. Now
4 that's just the truth. But, uh, I'm not saying - - I wasn't
5 trying to tell you that we shouldn't or, you know, you shouldn't
6 testify against those boys, or should testify against those
7 boys. I just want to talk about it first. And that's still all
8 I want say, I'm not telling you to make any - - any decision
9 about it. I just want you to sit down with me and talk about
10 it. There's several things you need to know, and you still may
11 decide you want to testify, and that's fine. There's a couple
12 of things...

13 MISSKELLEY: ...well, I'm, I'm scared still.

14 CROW: Sure you are.

15 MISSKELLEY: I - - I'm scared about getting on the stand.

16 CROW: I understand that.

17 MISSKELLEY: You know.

18 CROW: Now there's a couple of things I do want you to think
19 about, and I'm going to come down and talk to you tomorrow if
20 that's okay. Dan won't come, and there'll just be me, and we'll
21 sit down and talk and then I'll leave. In fact, if after five
22 minutes you tell me to leave, I'll leave. Okay?

23 MISSKELLEY: All right.

24 CROW: If I come down will you talk with me?

25 MISSKELLEY: Yeah.

1 CROW: Okay. I'll see you.

2 MISSKELLEY: But dad, when I talked to my dad and them Sunday -
3 - yesterday...

4 CROW: ...yeah.

5 MISSKELLEY: He told me to listen to y'all.

6 CROW: Okay.

7 MISSKELLEY: And he told me that, uh, y'all was trying to help
8 me and I, you know, I got mad at him and everything, and he told
9 me just don't worry about it, just listen to them.

10 CROW: Okay. I understand.

11 MISSKELLEY: So, you know, it's kinda hard because I can't deal
12 with what he's done to me.

13 CROW: I understand.

14 MISSKELLEY: So, that's my aunt and them told me just listen to
15 Dan. Don't listen to the prosecutor, just listen to Dan. He's
16 trying to help you.

17 CROW: We're trying to help you, Jessie.

18 MISSKELLEY: And I said well if he tried to help me I wouldn't
19 ended up on the - - behind bars in the first place.

20 CROW: Well, we can talk about that more tomorrow, but we are -
21 - Jessie, I promise you with all my soul, I'm trying to help you
22 the best I can. That's the honest to God truth. I'm doing
23 everything I can to help you.

24 MISSKELLEY: Well, I mean, I just, you know, I'm still scared
25 about getting on the stand.

1 CROW: Sure you are.

2 MISSKELLEY: Because, you know, when they ask me a question or
3 something, I'm going to be just sitting there and I have to go
4 through the whole story in my mind, and they going say, well,
5 don't think, just go ahead and say it out. You know, it can't
6 work like that.

7 CROW: Right.

8 MISSKELLEY: I have to let it go through my mind first then, you
9 know, right there.

10 CROW: I understand.

11 MISSKELLEY: They won't, you know, I just don't know, you know,
12 what to do now.

13 CROW: Sure. Now, I want you to think about a couple of things
14 over tonight and we'll talk about it more tomorrow, and again,
15 I'm not telling you what to do or what not to do, okay?

16 MISSKELLEY: Okay.

17 CROW: I just want to talk about. That's all I'm asking you to
18 do. Okay, one of the things I want you to think about is
19 there's some new evidence that shows that the, that the boys - -
20 okay, well, there's this smear that kinda shows, in my opinion,
21 that neither you, nor Jason nor Damien were involved. Okay?
22 We'll give you more - - I don't want to give it on the phone
23 without, uh, I, but I, to me, it shows that none of y'all
24 could've been there.

25 MISSKELLEY: Okay.

1 CROW: Okay?

2 MISSKELLEY: All right.

3 CROW: There's also a new Supreme Court case out that just came
4 out while we were at trial. Uh, came out (inaudible) February
5 that said, it says, your daddy did have to sign that form, or
6 you're confession wasn't valid.

7 MISSKELLEY: They told me yesterday, the prosecutors told me,
8 they said if it ain't true, Jessie, don't say it. You know,
9 that's what he told me. He said if it ain't true about you,
10 Damien, or Jason, don't say it.

11 CROW: Okay.

12 MISSKELLEY: He said we need to know the truth. That's all
13 we're asking, just to know the truth.

14 CROW: Well, when did they talk to you yesterday?

15 MISSKELLEY: Well, they come up here a little bit after 1:00.

16 CROW: A little after 1:00?

17 MISSKELLEY: Yeah.

18 CROW: How long they talk to you?

19 MISSKELLEY: Oh, almost, a pretty good while. Probably till
20 about 5:00 or 6:00, somewhere along there.

21 CROW: Who all was there?

22 MISSKELLEY: It was John and Brent.

23 CROW: John and Brent?

24 MISSKELLEY: Yeah.

25 CROW: Okay. Uh, I'd rather you not, all of a sudden, you're

1 your own boy, you can do what you want, but please, I really
2 would ask you not to talk to them unless I'm there. I mean, I
3 know you're mad at us, but we're really out there for your own
4 good.

5 MISSKELLEY: But that's what they told me, you know, when they
6 come in my room, you know, they got papers and that I ain't got
7 talk to them and all that. I just, you know, I just write it
8 down.

9 CROW: Okay. I really wish you wouldn't talk to them without me
10 being there. Well, what all did you tell them yesterday, do you
11 know?

12 MISSKELLEY: Basically, what I told y'all Thursday.

13 CROW: Okay. Well, all right. Uh, was it the same story again?

14 MISSKELLEY: Huh?

15 CROW: Was it the same story again?

16 MISSKELLEY: Yeah.

17 CROW: Okay. Uh, trying to think, uh, the biggest thing I want
18 you to think about is the fact there's a new case out that says,
19 that, in my opinion, that says that your daddy still has to sign
20 that form.

21 MISSKELLEY: What form?

22 CROW: The one, okay, you know when I sent out, you know, they
23 was going to question you and your signed off on your, your
24 waiver, your rights to an attorney, this was back on June 3rd,
25 now.

1 MISSKELLEY: Yeah.

2 CROW: You waived your rights to an attorney, all the other
3 stuff, and you waived your rights to stay silent, and let them
4 question you.

5 MISSKELLEY: Yeah.

6 CROW: And they didn't have your dad sign that form, but he did
7 have to go sign the polygraph or the lie detector test form.

8 MISSKELLEY: So you say that my dad supposed to sign that, about
9 being questioned?

10 CROW: Right, because you weren't, you were seventeen years old.
11 If you'd been eighteen, you didn't have to. But we questioned
12 your dad was supposed to sign that form. Well, the trial
13 court...

14 MISSKELLEY: ...well, nobody - - I, I hadn't ever done none of
15 them forms.

16 CROW: Oh, sure, it's not your fault, you know, it's not your
17 fault.

18 MISSKELLEY: I know when they usually ask me questions, my dad
19 signs it.

20 CROW: Right.

21 MISSKELLEY: He never pays attention to what it is.

22 CROW: Sure. I understand that. It wasn't your fault; it's the
23 police officer's fault. The police officer should have had your
24 dad sign it and they didn't. Now, it wasn't your fault, nobody,
25 nothing you did wrong, but uh, anyway, uh, and I'll - - there's

1 a new Supreme Court case out that I really think says that, that
2 we were right, your dad did have to sign it, you know. And we
3 raised that issue before, we asked the trial court to throw your
4 statement out because of that and he didn't do it, but I think
5 the judge was wrong.

6 MISSKELLEY: Uh-huh. (Affirmatively indicating.)

7 CROW: I think the Supreme Court will agree with us, I, you
8 know, uh, you know there's that and then there's that new
9 evidence I've been telling you about, in my mind proves that
10 neither you nor Jessie nor, excuse me, neither you nor Jason nor
11 Damien could have been there. I just think it proves it.

12 MISSKELLEY: You know, my dad sounded pretty upset yesterday
13 when I talked to him, 'cause they told me he came down here and,
14 you know, I asked them how they found out and he told me. So,
15 all he did was tell me was telling me, you know, talk
16 (inaudible) just listen to him.

17 CROW: Right.

18 MISSKELLEY: And I said, well, I...

19 CROW: ...I realize how the prosecutor would act like he's your
20 best friend, and how John and Brent both are, and uh, just
21 remember that pros - - Brent is the one that held that picture
22 of that bottle over your head to the jury and asked them to
23 sentence you to death.

24 MISSKELLEY: Well, you know, he brought them pictures back
25 yesterday.

1 CROW: Yeah.

2 MISSKELLEY: You know, so, I don't know. I just need
3 (inaudible) that's all I need.

4 CROW: I agree. I agree, Jessie, and I'm trying to help. I'm
5 going to try and get you some help. And, uh, no matter what
6 happens, bud, somebody, now I ain't giving up no matter what
7 happens, I ain't giving up on you. All right? I want you to
8 know that.

9 MISSKELLEY: I'm close to just about giving up, you know.

10 CROW: Well, don't give up because I'm, I'm going to be there
11 for you the next ten years if it takes that.

12 MISSKELLEY: Huh?

13 CROW: I'll be here for you for the next ten or twenty years, if
14 it takes that, I, I'm...

15 MISSKELLEY: ...he told me not to give up.

16 CROW: That's right. Uh, did any inmate down in Pine Bluff
17 threaten you or anything? I heard a rumor that maybe...

18 MISSKELLEY: ...Hate Dog, yeah, there's a bunch of people
19 threaten me.

20 CROW: What are they saying?

21 MISSKELLEY: Well, uh, when I was down there, you know, this nut
22 that was walking by and said he was going to cut my throat and
23 all that. And I wasn't really worried about it, you know. He
24 just (inaudible) started wanting to fight. You know, I'm not
25 scared of him. I ain't gonna back down.

1 CROW: No, that's one thing you don't do.

2 MISSKELLEY: And then some days he walking by, he and a whole
3 bunch other dudes said they's going to screw me and all that
4 when I got out of that bed. I walked by and they hadn't done
5 nothing. You know, I'm not going to back down for them. It's
6 going to take a lot to hold me down.

7 CROW: I bet 'cha.

8 MISSKELLEY: I'm going to fight them back.

9 CROW: I'll bet you will. Uh, is there any of them say, do any
10 inmates talk to you about that you ought to testify and all, or
11 anything like that, do they talk about that?

12 MISSKELLEY: No.

13 CROW: Okay. Have you talked to the sheriff or anybody in law
14 enforcement about testifying or not, before, before last
15 Thursday?

16 MISSKELLEY: Uh, no. No, we didn't hardly talk, when I was in
17 Pine Bluff they didn't hardly talk to me about it. Uh, you
18 know, they just talked, you know about what they did when they
19 was out, what they do in jail and all that. That's all they
20 told me.

21 CROW: Okay. Well, did you and the, uh, that guy who brought
22 you back up from, uh, Pine Bluff, from Pine Bluff to...

23 MISSKELLEY: ...Pickett?

24 CROW: Was that his name, yeah, I think that's his name.

25 MISSKELLEY: Yeah. Pickett.

1 CROW: What did y'all talk about on the way up?

2 MISSKELLEY: Talking about Susie and all that.

3 CROW: Talk about how much you want to see her?

4 MISSKELLEY: Yeah.

5 CROW: I don't blame you for that. She's cute.

6 MISSKELLEY: He told me he's going to try to get her, get her to
7 come up here and see me.

8 CROW: Oh, he did?

9 MISSKELLEY: I told him I wanted to.

10 CROW: I don't blame you for that. I, I like Susie; she's
11 sweet.

12 MISSKELLEY: I don't care who brings her up here. I just want
13 to see her.

14 CROW: Okay. Uh, so y'all talked about Susie. Did y'all talk
15 about you testifying or anything like that.

16 MISSKELLEY: Well, I hate to say it. Yeah.

17 CROW: I don't doubt that. I figured that, that's something
18 you'd just naturally talk about. What did y'all say? Do you
19 remember? Do you remember?

20 MISSKELLEY: Well, he just told me, you know, that I ought to
21 testify. That's all he said. He said I should.

22 CROW: He said you should?

23 MISSKELLEY: Yeah.

24 CROW: He said stop telling lies, he thought you should, or
25 anything?

1 MISSKELLEY: Well, he said, you know, they can drop my charges
2 on me, you know, not all of them, you know, being life in prison
3 plus 40, they said, you know, they can drop that or something.

4 CROW: Okay.

5 MISSKELLEY: So he told me I should do it. I told him, well, my
6 dad's going to be mad. He said no, I think he's going to be
7 glad. You know, so, I, I just don't know what to do no more.
8 So I don't know.

9 CROW: Okay. Uh, well, you know, that's just natural you'd talk
10 about something like that, because that's what was big on your
11 mind.

12 MISSKELLEY: Yeah.

13 CROW: Okay. Uh, do you mind if I tell the - - you remember
14 Val, the guy that came in to talk to you with Dan one time?

15 MISSKELLEY: Val Price?

16 CROW: Yeah.

17 MISSKELLEY: Yeah.

18 CROW: Do you mind if I tell Val what we talked about today?

19 MISSKELLEY: Uh, I really don't mind.

20 CROW: Okay. All right. Uh, well, I want you to think about
21 this, you know, again. I'm not trying to tell you what to do,
22 Jessie, you know me better than that.

23 MISSKELLEY: I told you, I don't know if I should get up there
24 or not, so...

25 CROW: ...I understand.

1 MISSKELLEY: 'Cause, you know, I know how they're going to be.

2 CROW: Yeah. The only thing I want you to think about, and I'm
3 not going to tell you what to do, we're going to sit down and
4 talk about it, and no matter what you decide, Jessie, I'm going
5 to give you a hug before I leave, okay?

6 MISSKELLEY: All right.

7 CROW: 'Cause you mean a lot to me. And...

8 MISSKELLEY: ...but when Dan told me, you know, if I get that
9 deal, he said, "If." If not, you know, then I'm in prison for
10 the rest of my life.

11 CROW: Okay. I want you to think about - - why don't you think
12 about the new evidence we're talking about, uh, chances we have
13 on appeal.

14 MISSKELLEY: Yeah.

15 CROW: And I also wanted you to think about this. Again, I'm
16 not trying to tell you what to do, I just want you to think
17 about things and we'll talk about it, okay?

18 MISSKELLEY: Well, Dan got me mad when he told me...

19 CROW: ...I understand that.

20 MISSKELLEY: The deal.

21 CROW: I certainly understand that. I want you to realize this,
22 if you testify against the other two, that's going to pretty
23 much going to kill any chances for appeal we have. Okay?

24 MISSKELLEY: Nobody never tell me that or nothing.

25 CROW: All right. I understand. That's why I want to talk to

1 you. That's the only reason I wanted to talk to you last
2 Thursday.

3 MISSKELLEY: Are you planning to come up here, you know,
4 tomorrow?

5 CROW: Sure. I'll be up there tomorrow, bud, and...

6 MISSKELLEY: ...I'll talk to you.

7 CROW: Okay. I appreciate it. I just want you to think about
8 those things between now and tomorrow.

9 MISSKELLEY: Don't bring Dan up here.

10 CROW: I won't bring him up there, okay? It'll be just me and
11 you. Do you want me to bring Karen?

12 MISSKELLEY: Huh?

13 CROW: Do you want me to bring Karen?

14 MISSKELLEY: You can.

15 CROW: Okay. All right. If Karen can get away from the office,
16 I'll bring her tomorrow, okay?

17 MISSKELLEY: All right.

18 CROW: Uh, just think about those things. I ain't going to tell
19 you what to do, Jessie, you know me better than that. And, uh,
20 we'll sit down and talk. And what ever you do, I'm going to
21 like you anyway and I'm going to hug you anyway.

22 MISSKELLEY: Well, my whole family told me, you know, to talk to
23 you, listen to you, don't listen to them prosecutors, he said
24 listen to y'all.

25 CROW: I'd say he's right on that.

1 MISSKELLEY: I got this from my dad.

2 CROW: Okay. Well, your dad told me to tell you he loves you.

3 MISSKELLEY: Yeah.

4 CROW: And he's thinking about what's best for you, you know
5 that.

6 MISSKELLEY: Yeah.

7 CROW: And, uh...

8 MISSKELLEY: ...yeah, he told me, he said, you know...

9 CROW: ...okay. well, I want to - - I'll talk to you tomorrow
10 and I got a...

11 MISSKELLEY: ...about what time you going to come up here?

12 CROW: Well, I'm trying to look. I think I've got a - -
13 probably around lunch time, I think.

14 MISSKELLEY: Lunch time?

15 CROW: Probably.

16 MISSKELLEY: All right.

17 CROW: Okay. I'll see you then, bud.

18 MISSKELLEY: All right.

19 CROW: Take care.

20 MISSKELLEY: All right. Bye-bye.

21 CROW: Bye-bye.

22 (WHEREUPON, the phone conversation ended; proceedings resumed in
23 open court as follows, to-wit:

24 CROSS-EXAMINATION, continuing:

25 Q] After we've listened to that, I hope you're going to say

1 that's your voice?

2 A] Yes, it appears to be. Yes, it is my voice.

3 Q] Okay. And it appears that if the, uh, if the statement
4 that was given in the presence of the sworn statement given in
5 Joe Calvin's office on Thursday, which was the 17th, there was
6 some mention in there that yesterday was Sunday. So would this
7 would be like the following week?

8 A] That would make sense; yes.

9 Q] Okay. So this was on like a Monday. And did you, in fact,
10 go down and talk to him?

11 A] I'm sure I did. I'm trying to - - you know, it's been a
12 long time ago. I do recall about going to talk to him about
13 testifying or not. But whether it was that next day or not, I
14 couldn't say, but I'm assuming from everything that happened,
15 yes, sir, I would say I did.

16 Q] And he was in Piggott at the time?

17 A] That's my recollection; yes, sir.

18 Q] Plaintiff's Exhibit #29 was introduced at the hearing
19 previously and I believe it is the billing record that you and
20 Mr. Stidham submitted for payment. It's turned out to be a good
21 narrative of the work that was done in this case. If you could,
22 turn over to page 41, I believe it begins with February 16th and
23 has some different items, like a phone call with Brent Davis,
24 and the trial has already occurred at this point; correct?

25 A] Correct.

1 Q] Okay. And then there's a conference with you and
2 conference with client and with Davis and Calvin, and then
3 there's meet with DTS, which that's probably a notation from
4 you?

5 A] Correct.

6 Q] Okay. Then on the 18th there is a particular conference and
7 is this travel to West Memphis, conference with Jessie, Sr. and
8 Dr. Ofshe, is that from you or from Dan?

9 A] That would have been Dan.

10 Q] Okay. The 19th, 20th and 21st, then turn to the next page
11 and it looks like "2/21, meeting with DTS," and then "2/22,
12 attend hearing, travel time to Piggott and meeting with client."
13 And it would appear that this was the meeting that followed that
14 particular telephone call?

15 A] That would make sense; yes, sir.

16 Q] It's reasonable to assume that?

17 A] Yes, sir.

18 Q] Okay. That kind of puts that in context. Was the purpose
19 of that calling in large part to understand where Jessie was at?

20 A] Yeah, if memory serves me, uh, Jessie had gotten mad. I
21 think Jessie had gotten mad at Dan; Jessie is now talking to the
22 prosecutors without any attorney present, which is never a good
23 idea, uh, and so I was trying to calm him down and for him to at
24 least let me come talk to him. If he wasn't going to let me
25 talk to him, there wasn't a whole lot I could do. So the main

1 purpose of the phone call - - I figured if I just showed up down
2 there, he wouldn't even see me.

3 Q] I see?

4 A] And I was trying to make sure it was okay for - - to get
5 him calmed down enough where he would at least come talk to me.

6 Q] Okay. And he did, in fact, talk to you?

7 A] Yes.

8 Q] And in fact, he did, I mean, for lack of a better term,
9 clients sometimes, you know, appointed or retained, at counsel
10 sometimes get their feathers ruffled with what happens; is that
11 right?

12 A] Yes.

13 Q] But now after Jessie was convicted, did you have any
14 particular opinion as to where the direction the case should or
15 could go?

16 A] I'm pretty pragmatic, and within a minute of the conviction
17 being announced, other than being worried about the sentencing
18 at that point, I guess actually I was, my thought had turned to
19 two things: One, we appeal; and two, possibly making a deal
20 with the prosecutor, uh, to testify at the second trial to try
21 to cut some time off his prison sentence.

22 Q] I see. Do you recall, if you go through the transcript
23 there, I just have two...

24 A] ...the phone call transcript?

25 Q] Yes. On page 15, you mentioned "do you mind if I tell - -

1 you remember Val, the guy that came in to talk to you with Dan
2 one time," and then Jessie says, "Val Price?" and then you
3 confirm that who you're talking about. So he did remember about
4 who Val Price was?

5 A] Yes.

6 Q] Do you recall when that was?

7 A] No.

8 Q] Well, would it have been before or after Dan's conversion
9 experience in this case, as far as terms of switching defenses?

10 A] Oh, it would have had to be afterwards.

11 Q] Afterwards?

12 A] Yes.

13 Q] Okay. I am curious. Do you recall - - you did mention
14 that - - and you filed a motion for a new trial; I think you
15 still represented him?

16 A] Yes.

17 Q] Do you recall what you were referring to when you talked
18 about this smear?

19 A] No. Reading that, I'm going - - I don't, I honestly, I
20 have no recollection. No.

21 Q] I don't either. Okay. But the other issues, in fact, I
22 think, were raised on appeal; you raised like five or six
23 issues?

24 A] Raised a bunch of issues; yes, sir.

25 Q] Did you ever consult with Dr. Ofshe, or was that Dan?

1 A] I've talked to him several times, obviously, but that was
2 mostly Dan, but I had lots of conversations with him over the
3 several months that we were involved.

4 MR. HOLT: That's all of the questions I have of
5 Mr. Crow.

6 RE-DIRECT-EXAMINATION

7 BY MR. ROSENZWEIG:

8 Q] The conversation that we just listened to, I assume you
9 were in your office?

10 A] I assume, as well.

11 Q] Was Mr. Stidham present during that conversation?

12 A] My guess would be yes, but I could not absolutely - - I'm
13 pretty confident - - yes.

14 Q] Would this have been something you would have initiated on
15 your own, and would you have talked to Mr. Stidham before you
16 called?

17 A] It would have been something we would have talked about.
18 Absolutely.

19 Q] Okay. And whose decision was it to record the call?

20 A] It just about had to be Dan, because that was just not my
21 practice. Dan recorded a lot of things; I probably never
22 recorded - - if you had asked me a week ago did I ever record a
23 phone conversation with myself and Jessie, I would have told you
24 no, you know, I didn't remember it.

25 Q] So you think it's possible that Mr. Stidham would have been

1 in the room at the time of the call?

2 A] Yes.

3 Q] But he may not have participated in the conversation?

4 A] Yes.

5 Q] If I heard you correctly at that point, and we heard the
6 tape correctly, at that point there was some antagonism between
7 Jessie and Dan; at least Jessie felt some antagonism?

8 A] Yes.

9 Q] And now this conversation was after the deposition and
10 sworn statements?

11 A] What I thought had happened, I thought he had given a
12 statement without anybody, without us being there. I think you
13 would have to say that later we were there.

14 Q] Yes?

15 A] Right. It appeared to be that he gave a statement to the
16 prosecutor and then this conversation occurred and I think
17 there's the second one, we were there and we asked him not to
18 testify, uh, I think that's later. I wouldn't swear to that,
19 but that's my recollection.

20 Q] This was the statement where it says that Joe Calvin, Brent
21 Davis, Jessie Misskelley, Dan Stidham and Greg Crow were
22 present, the one where the immunity is given?

23 A] Right.

24 Q] It says it was on February 17th?

25 A] Okay. Then I mistaken.

1 Q] And so you think this conversation then would have been
2 afterwards?

3 A] Yes, apparently so. I'm very comfortable this conversation
4 must have occurred on February 21st. That's what my letter says.

5 Q] Okay. Now, uh, this was before Mr. Wells got involved,
6 too; is that correct?

7 A] Well, I don't recall. I would assume, but yes, sir.

8 Q] And you indicated, you don't have any recollection what the
9 smear was?

10 A] No, sir.

11 Q] Do you recall what case you were talking about, that new
12 case?

13 A] No, uh, there had to be something - - I vaguely remember
14 now there was some case that came out on minors, the ones under
15 the age of eighteen, and their Miranda rights. It appeared to
16 be a Miranda right issue, uh, it must have come down. I said
17 it, I've noticed in there, I said it came out while we were
18 while we were at trial. So it had to have come out in January
19 or February, or whatever of '94, but I don't recall.

20 Q] It obviously wasn't dispositive of that issue?

21 A] Obviously not; no, sir.

22 Q] Then you met with him the next day; is that correct?

23 A] Yes, sir.

24 A] Do you recall what the substance of that conversation was?

25 A] I have no independent recollection. Logic tells me that I

1 would have been talking about whether he should, whether we
2 should make a deal to testify.

3 Q] Did any memorandum of that appear in your notes?

4 A] Not that I've seen; no, sir.

5 Q] Any recollection?

6 A] Not that I've seen; no, sir.

7 Q] Now would you agree, or disagree, that Mr. Misskelley had a
8 very hard time giving a narrative version of events?

9 A] Absolutely. Correct. He had a very hard time of giving a
10 narrative.

11 Q] And were you present for any incidents where Mr. Stidham or
12 other people were able to get him to admit to something that had
13 never occurred?

14 A] I can't remember any specific examples, but I know that
15 that happened; yes, sir.

16 Q] In other words, that did happen?

17 A] I do remember that happening; yes, sir. I could tell you
18 exactly what it was.

19 Q] Suggestible?

20 A] Yes, sir.

21 Q] Do you know if you were present for any interview where Ron
22 Lax was also present?

23 A] Interview with Jessie?

24 Q] Yes, with Jessie?

25 A] Not that I recall.

1 Q] Now Mr. Stidham has indicated that he had a - - talk about
2 it in religious terms - - epiphany or conversional experience
3 with regard to Jessie's, uh, how to approach the case. Did you
4 undergo any similar experience?

5 A] Yes.

6 Q] At the same time?

7 A] Yes, basically. It was in September and Jessie had, uh,
8 Jessie got mad and Jessie, Sr. got mad and went down to see
9 Jessie, Jr. at the jail. I don't remember what day it was, but
10 it was in September, and uh, Jessie was insisting at that point
11 that he was innocent and, uh, I got a feeling.

12 Q] But in other words, you had just been informed that was
13 thought to be the evidence that was convicting him, the guilt
14 was not?

15 A] Well, a couple of examples. Jessie was emphatic at that
16 point. I was kind of, I remember driving back thinking, it was
17 possible he was actually innocent. It was at that point we
18 still had what I thought was a critical piece of evidence. The
19 prosecutor still had the bloody T-shirt, and of course, within a
20 very short period after that, the next day or two days later, a
21 week later, I don't recall, but within a very short period of
22 time, we were at a hearing somewhere. I want to say West
23 Memphis - - I want to say Marion, but I wouldn't swear to it,
24 and, uh, the prosecutor informed me that bloody T-shirt would
25 not be used because it not only matched, the blood not only

1 matched the victim, but also matched Jessie. And that was
2 suddenly consistent with Jessie's, what Jessie had told me, uh,
3 when I mentioned the black T-shirt to him that day, that he told
4 me, he said, "that's my blood." He told me "I was mad in the
5 back yard, punching rocks." And that would be his blood on it,
6 so that was my epiphany.

7 Q] And he maintained, uh, he maintained his innocence during
8 the trial?

9 A] Yes.

10 Q] Okay. And then after the trial, there was, uh, apparently,
11 you indicated that they went and talked to him without lawyers
12 being present?

13 A] Apparently so; yes, sir.

14 Q] And then dangled the promises in front of him?

15 A] Yes, sir.

16 Q] And then he ultimately made the statement, uh, with the
17 promises dangling in front of him?

18 A] Yes, sir.

19 Q] And he had already been convicted and sentenced to life?

20 A] Yes, sir; life, plus 40.

21 Q] And he ultimately decided he was not going to testify
22 against the others?

23 A] That's correct.

24 MR. ROSENZWEIG: I pass the witness.

25 RE-CROSS EXAMINATION

1 BY MR. HOLT:

2 Q] And now was this big event that made you turn 180 degrees,
3 well, it turned the defense, because naturally, he is saying
4 that he is innocent at that point, you are obligated to move in
5 a different direction, are you not?

6 A] Correct.

7 Q] But that was rather dramatic for y'all, wasn't it?

8 A] Yes, it was.

9 Q] And so would it be surprising to learn that it wasn't rocks
10 that he cut himself on, but it would be Coke bottles?

11 A] Okay. It may have been. I've forgotten, uh, I was think-
12 ing rocks, but it may - - he may have told me Coke bottles at
13 the time.

14 Q] And he always, he never, no one was ever able to suggest to
15 him that the blood on the bloody T-shirt was that of a victim,
16 were they?

17 A] Uh, I don't remember even discussing the bloody T-shirt
18 with him, other than on that day in September. That was the
19 only time I ever recall discussing the bloody T-shirt with him
20 and he was upset, very upset, and emphatic that he was innocent.
21 And I presented the evidence to him and I said, "What do you
22 mean you're innocent; there's that bloody T-shirt?" And that's
23 when he discussed the rocks, the bottles, or whatever it was,
24 uh, it's been a long time, uh, and I think that's probably the
25 first time I ever discussed the bloody T-shirt with him; the

1 first time I recall of it.

2 Q] So in fact, if the State had in fact tried to use this
3 bloody T-shirt against him as evidence, and he knew that he
4 wasn't wearing that T-shirt that day and that it was his blood,
5 then he would be upset, wouldn't he?

6 A] Uh, yeah, I guess. I mean, if you're trying to make a deal
7 with the prosecutor, you're not worried about what evidence they
8 have or don't have, I guess. But as far as he's concerned, if
9 he's guilty and he's going to make a deal.

10 Q] He has a lot on the line, I mean, if he thinks that, I
11 mean, that's why he's upset about that particular thing because
12 he knows the certain facts about that T-shirt?

13 A] He was upset about - - that wasn't what got him upset.
14 That was towards the end of the conversation.

15 Q] I see?

16 A] He was already upset. I tried to calm him down by saying,
17 "Jessie, let's get back to where we were yesterday, like four
18 weeks before, with the bloody T-shirt." And that's when he told
19 me that it would be his blood on it.

20 Q] I see. I want to show you what's been marked as 12E and
21 ask if that handwriting looks familiar to you?

22 A] (Witness examining same.) That appears to be Dan's hand-
23 writing.

24 Q] If you would, look over that and tell me what that appears
25 to be, in your view?

1 A] (Witness examining same.) It's dated 6/11/93, apparently
2 an interview with client.

3 Q] And this is very early on, isn't it?

4 A] Yes.

5 Q] Okay. The billing record reflects "6/11/93, conference
6 with client, two and a half hours," that's on page 3. Do you
7 recall whether or not you were present for that particular
8 interview?

9 A] I do not believe I was; no.

10 Q] Okay. In terms of those particular notes, do you know
11 whether or not those notes are responsive to questions or what
12 exactly they are?

13 A] (Witness examining same.)

14 Q] Are you familiar with the way that Mr. Stidham would take
15 notes?

16 A] No, not enough to answer that question; no.

17 Q] Does that appear to be in a narrative form, or does it
18 appear to be in response to questions; just in your opinion?

19 A] I could say either one. If I recall, from what Dan told
20 me, vaguely, I believe he was having to ask him questions to get
21 him to come out. Jessie couldn't tell a narrative, so you'd
22 have to ask Dan.

23 Q] Okay. Well, we have.

24 A] Okay.

25 Q] But that is, does that appear to be, I mean, that's not

1 like "once upon a time," and then it goes and it ends with "they
2 lived happily ever after." I mean, it's set out in different...

3 A] ...sounds like - - I would say it's most likely from
4 questions, because it's numbered 1, 2, 3, so probably Dan asked
5 him a question and then he answered it. Yes, sir, that's what I
6 would guess.

7 Q] Okay. We'll get to it in just a minute. That's all I
8 have.

9 MR. HOLT: That's all I have.

10 THE COURT: Anything else?

11 MR. ROSENZWEIG: No, sir.

12 THE COURT: All right, you're free to go.

13 MR. HOLT: Now what I would insist, and because
14 of the elongated nature of this and the fact that it's
15 not Mr. Rosenzweig's fault that the other side doesn't
16 feel called upon to give us the idea of who they're
17 going to call, I would ask that he be excused for now,
18 but just kept under the Rule in case something else
19 arises.

20 MR. ROSENZWEIG: I have no problem with that,
21 Judge.

22 THE COURT: All right, that's fine. All right,
23 you're free to go.

24 THE WITNESS: Thank you, Your Honor.

25 (Witness excused.)