

1           THE COURT: Okay.

2 (A recess was taken; proceedings resumed as follows, to-wit:)

3           THE COURT: Are we set on the dates of the 28<sup>th</sup> of  
4 January and continue on until it is over?

5           MR. BURT: Right.

6           THE COURT: I am going to want y'all to prepare  
7 me briefs that spell out, I mean, a precedent that  
8 fits your theory of the case.

9 (THEREUPON, the proceedings were concluded November 21, 2008 and  
10 continued until April 2, 2009.)

11                                   **APRIL 2, 2009**

12           THE COURT: All right, let's get started. Where  
13 were we - - I can't remember now.

14           MR. ROSENZWEIG: Your Honor, we were on several  
15 tracks and for the purposes of this hearing, we are  
16 finishing Mr. Stidham and Mr. Crow in this session of  
17 court.

18                   And technically speaking, the record will reflect  
19 that the State had reserved some cross and that Mr.  
20 Burt had started re-direct just to get some done, and  
21 the State had reserved cross and I think we both  
22 agreed the proper thing to do would be for the State  
23 to resume its cross of Mr. Stidham at this time.

24           THE COURT: All right. That's fine. Well, what  
25 are we doing tomorrow? The same thing?

1           MR. ROSENZWEIG: The same thing.

2           MR. HOLT: And Mr. Crow had something he had to  
3 do at the Legislature, so I don't know that we will  
4 finish with Mr. Stidham today, but Mr. Crow will be  
5 here tomorrow. His will be very short but I thought  
6 we would just stick him in.

7           THE COURT: Okay. Did you have any trouble re-  
8 scheduling?

9           MR. ROSENZWEIG: No, not for today and tomorrow.  
10 I did for earlier in the week and that's why I thank  
11 the Court for being gracious enough to allow us these  
12 days, rather than earlier in the week.

13           THE COURT: All right, I'm ready. Call Mr.  
14 Stidham.

15           MR. HOLT: Before we call him back I do have a  
16 few things that, if I could, just to kind of let  
17 everybody know where we are.

18           THE COURT: All right.

19           MR. HOLT: And what I anticipate we have here,  
20 the last time we said, uh, and Jeff, he's got the  
21 whole file and it was our intention, or at least we  
22 talked among the attorneys - - I don't know if we  
23 mentioned it to the Court...

24           THE COURT: ...well, I'm always last to know.

25           MR. HOLT: Well, if then. But there's twenty

1 boxes of files and an index was prepared at some point  
2 way back. And we've got the index, and I don't think  
3 that it's really necessary to...

4 THE COURT: ...have y'all agreed on the index?

5 MR. HOLT: Have we agreed?

6 MR. ROSENZWEIG: Well, it was prepared by our  
7 side, Your Honor.

8 THE COURT: Well, if you want to offer a copy of  
9 the index just for the record, that probably would be  
10 a good idea.

11 MR. ROSENZWEIG: Judge, I don't have any problem.  
12 This was prepared by our side. Now what we've done,  
13 and I think we mentioned this before, but the boxes  
14 have been in a storeroom in my office and Mr. Holt,  
15 whenever he wants, can come over and look at them.

16 I brought them all up and rather than haul them  
17 up to the courtroom, they are sitting in my car, and I  
18 think it's safe to say at the end of it, they will all  
19 be put into the record. Do you want me to bring them  
20 in?

21 MR. HOLT: Well, either that or we will sit down  
22 and go over them box by box, because a lot of it is  
23 research for the appeal.

24 MR. ROSENZWEIG: And there are copies of the  
25 appellate briefs and things like that are in some of

1           them.

2           MR. HOLT: So I would like to offer a copy of the  
3           index.

4           THE COURT: It will be received without  
5           objection.

6           (WHEREUPON, State's Exhibit #6 was admitted and received into  
7           evidence and is appended on page .)

8           THE COURT: Anything else?

9           MR. HOLT: Yes, a little bit. I just wanted to  
10          do a little housekeeping. The June 3<sup>rd</sup> statement that  
11          Mr. Misskelley gave to the police, that is in, uh, I  
12          don't think we have put it physically into this  
13          record, but I'm sure that Jeff will agree that, you  
14          know, that was a trial record that is a part of this.

15          MR. ROSENZWEIG: Under *Drymon vs. State*, that's  
16          D-R-Y-M-O-N, the trial record is deemed part of the  
17          Rule 37 record and does not need to be specially re-  
18          introduced, so anything that was elicited after the  
19          trial is by definition a part of the process.

20          THE COURT: We played that tape at the trial,  
21          didn't we?

22          MR. HOLT: I believe so.

23          THE COURT: I think we did.

24          MR. HOLT: If it wasn't played, because I'm also  
25          getting it from a tape that Mr. Stidham had, you know

1 that was turned over in Discovery.

2 THE COURT: Okay. Well, do you want to introduce  
3 a transcript on that?

4 MR. HOLT: Yes, the transcript.

5 THE COURT: All right, I'm going to receive it.

6 (WHEREUPON, State's Exhibit #7 was admitted and received into  
7 evidence and is appended on page .)

8 MR. HOLT: But I don't anticipate on playing the  
9 tape.

10 THE COURT: All right.

11 MR. HOLT: And there were two, actually. There  
12 was one that was taken at 2:44 and there was another  
13 that I think, according to the Supreme Court opinion,  
14 was taken at approximately 5:00 p.m.

15 And I'm reading from *Misskelley v. State*, 323 Ark  
16 449, and this is the opinion on direct appeal, page  
17 459.

18 THE COURT: Well, those statements were played in  
19 the original trial and should be a part of the  
20 transcript of the original trial.

21 MR. HOLT: I believe they are.

22 MR. ROSENZWEIG: Yes.

23 THE COURT: I mean, I'm certain of that.

24 MR. ROSENZWEIG: I mean, we put the, uh, we put  
25 the abstract of the *Misskelley* trial in the appeal in

1 the DNA case that I'm working on right now.

2 THE COURT: All right.

3 MR. HOLT: Okay.

4 THE COURT: But if you feel like you need to  
5 introduce a transcription of it, I will receive it for  
6 the record.

7 MR. ROSENZWEIG: I mean, I don't have any problem  
8 with it if he wants to introduce it just to be double  
9 sure, I mean, subject to the same objections that were  
10 made at trial and everything else like that.

11 THE COURT: Yes, of course.

12 MR. ROSENZWEIG: I mean, that it is what it pur-  
13 ports to be, but we're not conceding that it is true  
14 or that it's admissible, or anything like that.

15 THE COURT: I understand that.

16 MR. HOLT: But it might be easier to abstract on  
17 direct appeal of this, if that becomes the case.

18 MR. ROSENSWEIG: Hopefully, you'll be doing it.

19 MR. HOLT: Well, we'll see. The next I have is  
20 the December 10, 1993 Wilkins/Stidham interview of Mr.  
21 Misskelley, and that was played during the last  
22 evidentiary hearing that we had.

23 THE COURT: Do you want to introduce a transcript  
24 of that?

25 MR. HOLT: Yeah, to make sure that it's part of

1 the record.

2 THE COURT: All right, I'll receive that, as  
3 well.

4 MR. HOLT: The next that was made part of the  
5 record was the February 8, 1994 interview that was  
6 conducted by Daniel Stidham of Mr. Misskelley that  
7 took place in the Pine Bluff, Arkansas Department of  
8 Correction Diagnostic Unit and we provided a trans-  
9 cript of that and we would make that a part of the  
10 record, and that tape was actually played it had -  
11 two parts, but it was actually played...

12 MR. ROSENZWEIG: ...was that February 23<sup>rd</sup>?

13 MR. HOLT: No, February 8<sup>th</sup>. And that was played  
14 at the last hearing.

15 THE COURT: All right, a copy of that transcript  
16 can be received, as well.

17 MR. HOLT: There is also a copy - - I don't  
18 believe that we have played - - there is another tape  
19 of February 15<sup>th</sup> and this is an interview by Daniel  
20 Stidham of Jessie Misskelley, and again, this took  
21 place at the Pine Bluff Department of Correction  
22 Diagnostic Unit, and that's something that we will get  
23 to today.

24 THE COURT: All right.

25 MR. HOLT: But following that February 15<sup>th</sup>, there

1 was a February 17<sup>th</sup> tape that was played, and that was  
2 the statement that Mr. Misskelley gave pursuant to a  
3 grant of immunity and that was played at the last  
4 hearing, subject to counsel's objections.

5 MR. ROSENZWEIG: Which we continue.

6 THE COURT: I understand that.

7 MR. HOLT: Okay. And I believe - - if we didn't  
8 - - I don't think we offered a transcript of it at the  
9 time but we will offer one - - I think there may be  
10 one in your packet, too.

11 THE COURT: All right.

12 MR. ROSENZWEIG: It's not in the packet you gave  
13 me, but I do have a copy.

14 THE COURT: Are you offering that transcript?

15 MR. HOLT: Yes, we're going to be offering that  
16 transcript, too.

17 THE COURT: Any objection?

18 MR. ROSENZWEIG: Yes. This is the one that was  
19 offered as he says, under the grant of immunity. And  
20 obviously, you know, our position is that this should  
21 not be considered for any purpose - - or whatever,  
22 because it specifically was...

23 THE COURT: ...I understood that you made that  
24 objection at the previous hearing and I think my  
25 ruling was that since this is a Rule 37 petition, that



1 the grant of immunity wouldn't apply to a post-  
2 conviction hearing and I allowed it, and now all we're  
3 doing is producing a copy of the actual transcript for  
4 the record.

5 MR. ROSENZWEIG: Yes, sir. You had said "any  
6 objection," so I wanted to state that.

7 THE COURT: Yes, your previous objection will  
8 stand, but I'm going to allow a copy of it for the  
9 record, and my previous ruling will also apply.

10 MR. HOLT: Okay. And so what's remaining is also  
11 a February 23<sup>rd</sup>, there are two taped statements, one  
12 involving Daniel Stidham, Phillip Wells, and Mr. Miss-  
13 kelley and then a second one on that same day, subse-  
14 quent to that, Daniel Stidham and Jessie Misskelley  
15 that was February 23<sup>rd</sup>.

16 THE COURT: Well, those statements were taken  
17 after the trial, were they not?

18 MR. HOLT: Correct. Yes, sir.

19 THE COURT: And I think Mr. Bristow had been  
20 appointed by the Court?

21 MR. HOLT: Mr. Wells, do you mean?

22 THE COURT: I mean, Mr. Wells had been appointed  
23 by the Court?

24 MR. HOLT: Right.

25 THE COURT: Okay.

1           MR. HOLT: And finally, there is one, a short  
2 tape of March 2<sup>nd</sup> of Daniel Stidham and Jessie  
3 Misskelley.

4           THE COURT: All right.

5           MR. HOLT: So that comprises the taped portion of  
6 what we are going to do. Just for the record, Rose-  
7 mary, I've got Stidham billing records as Exhibit #29,  
8 if you would make a note of that.

9           THE COURT: Has that already been introduced?

10          MR. HOLT: Yes, sir.

11          THE COURT: I thought it had. I think he was  
12 questioned about that, as I recall.

13          MR. HOLT: To some degree.

14          MR. ROSENZWEIG: Kent, I don't have a copy.

15          MR. HOLT: So I think with that, we're ready for  
16 Mr. Stidham.

17          THE COURT: Is Judge Stidham in the back. Tell  
18 him we're ready for him.

19 (Pause.)

20          THE COURT: All right, for the record, you're Dan  
21 Stidham?

22          THE WITNESS: Yes, sir.

23          THE COURT: And you were previously sworn in this  
24 matter?

25          THE WITNESS: Yes, sir.

1           THE COURT: And you understand that you are under  
2 oath for the purposes of this hearing?

3           THE WITNESS: Yes, sir.

4           THE COURT: All right, you may proceed.

5           MR. HOLT: Thank you, Your Honor.

6 WHEREUPON,

7                           DAN STIDHAM

8 was called as a witness by and on behalf of the Respondent/  
9 Defendant and having been previously sworn, was examined and  
10 testified as follows, to-wit:

11                           CROSS-EXAMINATION

12 BY MR. HOLT:

13 Q] First of all, Mr. Stidham, my name is Kent Holt and I'm  
14 with the Attorney General's office and we are assisting in this  
15 case. Another assistant is attorney general David Raupp, along  
16 with Mike Walden, who is now prosecutor. So the faces have  
17 changed a little bit. I wanted to talk to you today just by way  
18 of a little bit of review and some clarification, on some of the  
19 answers that you gave in your direct- and cross-examination at  
20 the last hearing and I also wanted to go over with you some  
21 different aspects as they relate to the billing records, because  
22 the billing records seem to be a very accurate sort of schematic  
23 participation in the case by you and Mr. Crow. Would that be a  
24 pretty accurate statement?

25 A] Yes, sir.

1 Q] In terms of the billing statement and what-not, would you  
2 say that this is a floor or a ceiling on the amount of work that  
3 you did on this case?

4 A] Every hour that we put into the case is documented, and  
5 should be in my billing records.

6 Q] But just, just in terms of you thinking about the case and  
7 sort of being invested in the case, would you say that this re-  
8 flects at a minimum the amount of time you spent working on this  
9 case, thinking about this case?

10 A] Obviously, I didn't record every time I thought about the  
11 case while I was in the shower, you know, or walking to my car,  
12 things of that nature; but any time I did anything substantive -  
13 - research, interview witnesses, appear at a hearing, certainly,  
14 I recorded my time.

15 Q] Okay. You recorded the time and made a note of what you  
16 had done, I assume, in some form?

17 A] It's been sixteen years since I have seen that, but yeah, I  
18 saw a couple of pages of it, I believe, in the September  
19 hearing. But yes, it's an accurate recording of what we did.

20 Q] Okay.

21 MR. HOLT: May I approach the witness?

22 THE COURT: Yes.

23 CROSS-EXAMINATION, continuing:

24 Q] This is marked Plaintiff's Exhibit #29 and it's a copy - -  
25 not Plaintiff's - - that would be Mr. Misskelley - - but I'm

1 showing you what's been marked as State's Exhibit #29 that has  
2 been introduced into evidence and that is the billing records or  
3 statement of account that you submitted in this particular case?

4 A] (Witness examining same.) Yes, sir, it's been a while  
5 since I've seen it, but it appears to be that. Yes, sir.

6 Q] Okay. Now I believe the last time we were here in your  
7 direct and then cross-examination, you described the circum-  
8 stances whereby you and Mr. Crow were retained, or were  
9 appointed, actually, to represent Mr. Misskelley. Is that  
10 correct?

11 A] I believe that's correct. Yes, sir.

12 Q] Well, you said you received a call from Judge Goodson at  
13 the time?

14 A] Yes.

15 Q] And that you accepted the appointment and that following  
16 that, that you made contact with Jessie Misskelley?

17 A] Eventually; yes, sir.

18 Q] Okay. Now when you say "eventually," if you would refer to  
19 the billing statement, when it says that you had on 6/7, and now  
20 Mr. Misskelley was arrested on June the 5<sup>th</sup>, on June 7<sup>th</sup> you have  
21 a phone conference with the Crittenden County Sheriff's  
22 Office...

23 A] ...Mr. Misskelley was arrested when, sir?

24 Q] June 5<sup>th</sup>, 1993.

25 A] I thought it was June 3<sup>rd</sup>.

1 Q] I'm sorry. You're correct. June 3<sup>rd</sup>. I think that was the  
2 date of the statement?

3 A] I'll have to assume that; yes, sir.

4 Q] Okay. So June 7<sup>th</sup> you have a phone conference with Tom Hall  
5 - - who is Tom Hall?

6 A] June 7<sup>th</sup>. This shows I had a conference with Crittenden  
7 County Sheriff's office on June 7<sup>th</sup>.

8 Q] Yes?

9 A] I don't see any Tom Hall.

10 Q] Keep going down to the second paragraph...

11 A] ...oh, I see that. Uh, I have no idea who that is.

12 Q] Okay. With client - - that would be Mr. Misskelley;  
13 correct?

14 A] It would seem that I contacted the Sheriff's Office to try  
15 to determine where Mr. Misskelley was, and at that point, uh,  
16 they referred me to whoever Mr. Hall was and apparently he was  
17 an officer at the detention center where Mr. Misskelley was  
18 being housed. And my recollection was that it was in Cherry  
19 Valley, some place down south. I don't remember for sure what  
20 county it was, uh, but it looks as if I made phone contact with  
21 Mr. Misskelley that day, too.

22 Q] And that was - - okay - - and with client's father. That  
23 would be Jessie Misskelley, Sr.; correct?

24 A] That's correct.

25 Q] The next contact that you have with your client is, you

1 have a listing on June 8<sup>th</sup>, 1993 and you have various aspects of  
2 work on the case like change of venue research, uh, the Sunday  
3 newspaper story regarding the client's statement. Do you recall  
4 as of June 8<sup>th</sup> if you had a copy of your client's statement to  
5 the police?

6 A] I believe, and again, it's a long time ago, but I think all  
7 I had was the newspaper.

8 Q] At that point?

9 A] At that point.

10 Q] You hadn't received any formal or informal discovery?

11 A] I don't think that we received any discovery until that,  
12 uh, hearing that we had in Marion with Judge Parker later on.

13 Q] Okay. And we'll get to that. After that is a listing,  
14 still under June 8<sup>th</sup>: conference with client, June 8<sup>th</sup>, and it has  
15 listed 3.5 hours. So would that have been in person?

16 A] Are you talking about on page 2?

17 Q] I'm talking about the first page, the bottom line?

18 A] Oh, okay. As I recall, what I did, and again, I'm trying  
19 to recall events that happened long ago...

20 Q] ...we'll stipulate that it happened long ago.

21 A] All right. It seems like I called the Crittenden County  
22 Sheriff and found out where Mr. Misskelley was being housed and  
23 requested that he be moved to a facility closer to me so that I  
24 would have greater access to him. And I don't remember whether  
25 I contacted Judge Burnett, uh, or how exactly we managed to do

1 that, but he was transferred to Clay County, to the detention  
2 center there in Piggott. And apparently that happened rather  
3 quickly, because I met with him on June 8<sup>th</sup> after being appoint-  
4 ed on June 3<sup>rd</sup>. Actually, he was arrested on June 3<sup>rd</sup>, uh, I  
5 don't recall what date Judge Burnett appointed me - - I mean  
6 Judge Goodson appointed me - - it might have been the 7<sup>th</sup>. It  
7 seems like it was a Monday morning.

8 Q] Okay. We'll look and see what day was Monday in that  
9 regard, but that was, you were physically present with Jessie at  
10 that conference with your client?

11 A] Although I have no recollection of that actually happening,  
12 obviously I was; it's in my billing record. Yes, sir.

13 Q] I see.

14 A] I remember the first time I met him, uh, but I couldn't  
15 tell you exactly what date it would be, but it appears to be  
16 June 8<sup>th</sup>, 1993.

17 Q] Okay. Well, and this is the record that, I mean, you made  
18 records so you would be reimbursed for your time and those  
19 records appear to have reflected that it was June 8<sup>th</sup>; correct?

20 A] Sure.

21 Q] And so you have no reason to dispute that?

22 A] No reason whatsoever.

23 Q] Again, and this is one thing about the billing, this bil-  
24 ling record is both you and Mr. Crow, is it not?

25 A] Yes.



1 Q] Okay. So sometimes things will be combined and they might  
2 be phrased a little differently, or it might look like somebody  
3 worked sixteen hours a day when it was actually two attorneys  
4 working eight hours a day; is that right?

5 A] I'd have to go through and look...

6 Q] ...we are.

7 A] It seems like, uh, at that time we didn't have a computer-  
8 ized billing system. This is a DOS based, uh, word processing  
9 program, uh, my recollection is that we manually kept up with  
10 our time and turned it in to the secretary and then she logged  
11 it into the computer.

12 Q] I see. Well, on page two, and the page number is paginated  
13 up on the top in the right-hand corner...

14 A] ...yes, sir.

15 Q] It has June 8<sup>th</sup>, again, 1993 and it has some more time and  
16 it's to review newspapers. It's phrased a little bit  
17 differently; it says "review newspapers, meet with client, phone  
18 calls to client's family." So do you recall whether or not Mr.  
19 Crow was with you on June 8<sup>th</sup>?

20 A] He was with me the first day we met with Mr. Misskelley.

21 Q] So is it reasonable to assume that this is...

22 A] ...his time and my time.

23 Q] His time and your time. Okay.

24 A] I believe our paralegal was with us, as well.

25 Q] And who would that be?

1 A] Her name is Vicky Kross, K-R-O-S-P.

2 Q] K-R-O-S-P?

3 A] That's correct.

4 Q] Do you know where she is located now?

5 A] Not really.

6 Q] Do you know if she still lives in Paragould?

7 A] I think she lives around Lake Norfolk, somewhere.

8 Q] Can you provide us with any information that would enable  
9 us to contact her?

10 A] Sure. I might have it in my address book.

11 Q] Okay. If I could get that from you later?

12 A] I'll have to e-mail it to you, because I don't have my  
13 computer with me.

14 Q] Okay. Sure. Can you describe or do you recall what  
15 Jessie's physical appearance was on the 8<sup>th</sup>?

16 A] Yes, sir. Very vividly.

17 Q] Well, if you would then, vividly describe it?

18 A] Uh, he didn't look anything like, uh, like the newspaper,  
19 uh, reports indicated. I was expecting a much larger person  
20 and, uh, uh, he had a very unique haircut, uh, it was kind of a  
21 combination of Gomer Pyle and Mr. T.

22 Q] That was popular in the neighborhood, wasn't it?

23 A] I don't know for sure, but it seemed a bit strange to me,  
24 uh, and the thing that I remember the most and most vividly was  
25 the fact that the jail uniform that they provided to him, the

1 pants were - - they had given him the smallest set that they had  
2 and then he had to roll the pants up about six times and the  
3 arms to even get it to fit into it. He was just very, very  
4 small. And that took me by surprise, somewhat.

5 Q] Well, what was his mental attitude; how was he holding up?

6 A] He was, he didn't really seem to understand who we were and  
7 what we were doing and it was very difficult to get him to talk  
8 at all, to open up; he wouldn't talk. And I believe that Mr.  
9 Crow and I tried to, uh, use the newspaper report that we had  
10 from *The Commercial Appeal* to try to ask him real basic  
11 questions about what happened and, uh, immediately, it became  
12 obvious that his story was different than what, uh, had been  
13 published in the newspaper; there were critical things that were  
14 different.

15 Q] Did you tape that conversation?

16 A] I don't recall taping it. I don't think so. I've never  
17 seen a tape or heard a tape, although I have to admit that in  
18 the past couple of weeks I've listened to some tapes that I had  
19 forgotten that I made.

20 Q] Did you make or produce any kind of memo, a typed memo  
21 following that initial meeting?

22 A] If I did, it would be in my file, which I haven't seen in  
23 about five years.

24 Q] What happened to your file?

25 A] Uh, when the new lawyers came on board, I want to say it

1 was in October of 2004, it could have been '03 or '05, but, uh,  
2 somewhere in that range they came into my office in Paragould  
3 and the file is humongous, uh, last count, it's about seventeen,  
4 fifteen to seventeen banker's boxes of information. And, uh,  
5 they were going to go copy it and, uh, I suggested to them that  
6 perhaps the easiest way to resolve that issue would be to ship  
7 it to California to their offices and let them copy it at their  
8 time and expense as opposed to going to Kinko's and paying and  
9 going through all of the gymnastics of that. It would have been  
10 very, very expensive to do that. And, uh, they agreed and so  
11 they asked me how I had catalogued the file; I explained to them  
12 my index system which wasn't very advanced, but explained to  
13 them how I catalogued everything. And then I think within a  
14 matter of a few days, uh, the file was shipped to California.

15 Q] How did you catalogue everything? Did you provide a typed  
16 index for them?

17 A] Uh, yes, uh, originally, because I assumed Mr. Misskelley  
18 was guilty, uh, when the discovery information started coming  
19 in. I would read it all, uh, but I, uh, Mr. Crow and I would  
20 read it but we didn't put it in separate files or folders  
21 because, uh, the only thing that we were concerned about was  
22 getting him prepared to testify against his co-defendants. So  
23 unless it related to his statement, uh, uh, or the other two  
24 defendants, we just kind of - - essentially, I think we had one  
25 big box that said, uh, "Discovery from the State that's

1 irrelevant," and then "Discovery from the State that's  
2 applicable." And so we just kind of threw everything into two  
3 separate boxes and then the boxes began to grow. And then, of  
4 course, in September when things changed, we had to go back  
5 through and start trying to re-index everything.

6 Q] I show you what's been marked as State's Exhibit #6 and ask  
7 you if you can identify- - what does that appear to be?

8 A] It appears to be an index of my file, but it wasn't  
9 prepared by me.

10 Q] Well, did you have some correspondence - - before when you  
11 referred to the attorneys now, are you referring to Mr. Burt?

12 A] Yes.

13 Q] Or Mr. Phillipsborn?

14 A] Mr. Phillipsborn, uh, represents Mr. Baldwin.

15 Q] Well, you did have some correspondence with Mr. Phillips-  
16 born, too, correct?

17 A] That's how, that's how, uh, I was put in contact with Mr.  
18 Burt, was through Mr. Phillipsborn.

19 Q] So isn't it safe to say that you cooperated fully with them  
20 with regard to transferring the file to them?

21 A] With the exception of that one tape that I found in my  
22 vault, uh, prior to the last hearing, or maybe it was the  
23 hearing in September.

24 Q] Okay?

25 A] I think what this is, Counselor, is their index, based on

1 my index, which was probably handwritten, for the most part.  
2 Some of it was typewritten, as I recall, and some of it may have  
3 been handwritten.

4 Q] But your file did have a lot, I mean, I think we'll get to  
5 it later; you could have one that was typewritten as to the  
6 Misskelley file index?

7 A] It would be in a DOS based word processing program. I  
8 would recognize it immediately.

9 Q] Okay. And so everything that you had, every note, memo,  
10 with the exception of the tape, everything that you had with  
11 regard to this case that you had retained, went to Misskelley's  
12 subsequent counsel; is that correct?

13 A] As far as I know, yes, sir. It was all in one place and,  
14 uh, all of the boxes were together.

15 Q] Okay. Now you've described Misskelley's physical appear-  
16 ance on that June 8<sup>th</sup> day that you first made contact with him.  
17 Do you know if you made any notes at all on that date, or made  
18 any, prepared any kind of memo describing that, or are you going  
19 from your memory in terms of the way he looked and what his  
20 mental attitude was?

21 A] I remember it like it was yesterday, and some things I  
22 can't remember at all, but some things I remember vividly, and  
23 that was certainly one of them. If I made a memo or notes, it  
24 would be in my file.

25 Q] Okay.

1 A] And again, I haven't seen my file in years.

2 Q] Okay. Now I believe you testified that you and Mr. Crow  
3 had had some criminal law experience when you were with the pub-  
4 lic defenders in Greene County; is that correct?

5 A] Yes, sir.

6 Q] So you had heard, uh, you had heard more than one story  
7 before; I mean, you didn't just fall off the turnip truck and  
8 represent Jessie Misskelley, did you?

9 A] Uh, I'm not sure that I understand your question.

10 Q] You had clients that talked to you before; you had inter-  
11 viewed clients before, had you not?

12 A] Sure. Absolutely.

13 Q] You had even interviewed witnesses before?

14 A] Yes.

15 Q] You had interviewed, I assume you had interviewed clients  
16 of varying mental abilities, as well?

17 A] I, I, can't...

18 Q] ...yes or no?

19 A] No. If I have to answer yes or no, I would say no, I don't  
20 recall ever having a client who was as handicapped as Mr. Miss-  
21 kelley.

22 Q] What I asked you, Mr. Stidham, have you interviewed clients  
23 with varying mental abilities?

24 A] Well, yes, everybody...

25 Q] ...yes or no?

1 A] Are you angry at me?

2 Q] No, I'm not angry. I would just like for you to answer the  
3 question.

4 A] Okay. Would you repeat the question?

5 Q] During the course of your practice, did you represent  
6 different clients with varying mental abilities?

7 A] The answer to that, the obvious answer to that would be  
8 yes.

9 Q] Okay.

10 A] Everybody has different varying mental capabilities.

11 Q] Very good. And during the course of your practice, did you  
12 interview witnesses who had varying degrees of culpability?

13 A] Certainly.

14 Q] Okay. In fact, I don't know if you were in the courtroom  
15 at the time, but at our last hearing a case was discussed, and  
16 it was a Pamela Hammers case; it had more than one round that it  
17 went through, but there's some language, I don't...

18 THE COURT...I remember that case well. I was un-  
19 fortunate enough to try it both times.

20 CROSS-EXAMINATION, continuing:

21 Q] Okay. Well, I'm talking about the 261 Ark 585 case, and  
22 there's some language in there and it says in this language, and  
23 I want to know if you agree with this or not, just as a defense  
24 lawyer. It says, "it eventually turned out, as is so often the  
25 case, both," meaning both defendants, "exhibited that extreme



1 generosity about sharing the blame that makes accomplice  
2 testimony suspect. Each also seemed extremely reluctant to  
3 claim an equal share of the responsibility." Would you agree  
4 with that observation?

5 A] Is that the statement from the case that you are reading?

6 Q] Yes.

7 A] Can I see it?

8 Q] It's the *Hammers* case.

9 A] I'm not familiar with the case.

10 THE COURT: It's an old one, Dan. I was  
11 prosecuting attorney. We exchanged brass for gold and  
12 vice versa.

13 THE WITNESS: I remember that coming up last  
14 time, about what you just said.

15 CROSS-EXAMINATION, continuing:

16 A] Yes, sir, I think when you have co-defendants, uh, it's  
17 very often the case that they will try to minimize their  
18 involvement and point the finger at the other guy. That's  
19 pretty common.

20 Q] Okay. And that would have been something that you would  
21 have been mindful of at that time?

22 A] Right.

23 Q] And this was just as the general proposition of the  
24 business you were in; is that correct?

25 A] Yes, sir. Sure.

1 Q] Would you also agree with, uh, following that a defendant  
2 in a case, someone who gives a statement in a case doesn't  
3 necessarily start out when they give the statement and reveal  
4 just how guilty they are?

5 A] I think that probably would be something that is pretty  
6 common, as well.

7 Q] Okay. Now I'd like to follow up on one of your answers  
8 that you gave earlier. Here's the question by Mr. Davis: "Would  
9 it be fair to say that the Court..."

10 MR. ROSENZWEIG: ...what page?

11 MR. HOLT: Oh, I'm sorry. Page 52.

12 THE WITNESS: Of November, or September?

13 MR. HOLT: Of the record in November 19<sup>th</sup>.

14 THE WITNESS: What line?

15 MR. HOLT: Line eleven.

16 CROSS-EXAMINATION, continuing:

17 Q] Question: "Would it be fair to say and the Court can  
18 review your testimony previously, but if I understood your  
19 testimony..."

20 THE WITNESS: ...I'm sorry. What page again,  
21 sir?

22 MR. HOLT: Oh, I'm sorry. Page 52.

23 THE WITNESS: My 52 doesn't say that. Maybe I'm  
24 in the wrong transcript.

25 MR. ROSENZWEIG: There are three of them.

1                   MR. HOLT: Let me see what you've got there.

2                   That's the wrong transcript. Yeah, this is the one.

3                   THE WITNESS: I'm with you now, sir.

4 CROSS-EXAMINATION, continuing:

5 Q]     Okay. "And would it be fair to say and the Court can  
6 review your testimony previously, but if I understood your  
7 testimony up until September the 24<sup>th</sup>, one of you, what you said  
8 your problem was is your client didn't make any sense. You  
9 couldn't talk to him; you couldn't discuss what happened to him  
10 on the day of his arrest, he couldn't give you any details of  
11 anything."

12 And your answer: "All he could do was answer 'uh-huh,' 'uh-huh.'  
13 'yes,' 'yeah,' 'no.' There was very little if any narrative  
14 that he could ever provide me about any of the events that he  
15 allegedly saw and, uh, that was very troubling and frustrating  
16 to me and, uh, that was also about this same that we had the  
17 hearing in Marion, excuse me, in West Memphis, uh, the prosecu-  
18 tor Fogelman had advised me that, uh, a DNA match that he  
19 thought that he had on this T-shirt that was found in Mr. Miss-  
20 kelley's trailer was not the victim's blood, but Misskelley's  
21 own blood. And, uh, Mr. Misskelley had told me previously that  
22 that was his own blood on the T-shirt."

23 And I'll just stop real quickly for that. And that was correct,  
24 wasn't it, what Misskelley told you about this T-shirt, at least  
25 in terms of the testing being inconclusive as to all but seven

1 percent of the population which included Mr. Misskelley, was  
2 consistent with what Mr. Misskelley told you, wasn't it?

3 A] It was.

4 Q] Why?

5 A] He told me he broke a coke bottle with his fists and that's  
6 how he got the blood on his shirt.

7 Q] And he also said that he didn't get any blood on him during  
8 the fight with the three boys, didn't he?

9 A] That depends on which statement you're referring to, I  
10 think.

11 Q] But he did say, but he had said that?

12 A] Yes, he had said that previously.

13 Q] And he had said that consistently, had he not, that he  
14 didn't get any blood on him?

15 A] I'd have to go back and look at each statement, but I think  
16 your characterization is correct.

17 Q] Okay. And so continuing, line 2, page 53: "And so that's  
18 when Mr. Crow and I said 'rutro, this is not what we thought it  
19 was, and we need to start going out and taking a look at these  
20 alibi witnesses and confront Mr. Misskelley.' And this memo is  
21 basically memorialization of my confrontation with my client  
22 about 'why did you tell us this when, when, uh, it wasn't the  
23 case?'"

24 Okay. Now is that referring to the memo of September 24<sup>th</sup>?

25 A] I believe so. I can't remember the date but it seems as if

1 it was introduced as an exhibit.

2 Q] Okay. I believe it's exhibit #34. And you'll have to  
3 pardon me. Part of this, what I'm doing, is to get us back to  
4 where we were when we left, kind of retracing.

5 A] I thought when we left I was under re-direct, but I could  
6 be wrong.

7 Q] We reserved cross. And that's the memo that I believe  
8 you're referring to in that previous testimony?

9 A] (Witness examining same.) Yes, sir, it is.

10 Q] And it starts with: "Spoke with Jessie today via telephone  
11 regarding why he tells dad he wasn't at crime scene and why he  
12 tells us he was. He related the following," uh, and then there  
13 are several different things that he talks about. He talked  
14 about huffing gas. Now in fact, did you ever receive any  
15 confirmatory information in that regard or that he maintained  
16 that he had in fact done that in the past?

17 A] I don't think we ever got any information from anyone else  
18 that they had done it with him. I don't recall that, but I  
19 think I was simply going on based on what my client had told me.

20 Q] What he told you. Well, if there is information that talks  
21 about other people, for instance, who introduced him to doing  
22 that or having that practice. Did he ever tell you that he lied  
23 about huffing?

24 A] That he lied about huffing gas?

25 Q] Yes?

1 A] Not that I recall, Counselor.

2 Q] Okay?

3 A] Uh, I just don't remember that.

4 Q] Well, in fact, in this same memo he says that Dino Pretti  
5 got him started huffing?

6 A] That's what it says. Yes, sir.

7 Q] Okay.

8 A] And actually, I think that's a typo. I think his name is  
9 actually Fretti.

10 Q] Fretti. Okay. "He wants us to get him evaluated." Do you  
11 know if this is - - when he said he wanted to be evaluated, was  
12 he talking about psychological evaluation, or was he talking  
13 about psychiatric care?

14 A] Mr. Misskelley never could articulate those type phrases.  
15 It would always be something like, uh, "I ain't all here," or  
16 "something wrong with me," he would phrase it in those terms.

17 Q] I see. Moving down through there it says, "9:00 to twelve  
18 noon he says that he worked with Ricky Deese and John Darby  
19 roofing a house in West Memphis."

20 Did you later put on a witness in the belief that Ricky Deese  
21 could confirm that?

22 A] Yes, and I think they were actually roofing a house in  
23 Memphis, not West Memphis.

24 Q] Okay. But he also provided to you the alibi that you  
25 recorded in this memo that from "1:00 p.m. to 6:30 p.m. roofed

1 house in West Memphis with Ricky and John and they dropped him  
2 off at 6:30."

3 That wasn't the case, was it?

4 A] I don't think so. I think, uh, after lunch he decided he  
5 didn't like roofing anymore. I don't think he went back that  
6 afternoon to roof anymore. That's my recollection.

7 Q] Okay. So that was untrue?

8 A] I think so; yes, sir.

9 Q] So based upon that untruth, I guess this was just more than  
10 "I was off for the day and didn't go back," and as you said, he  
11 didn't like roofing; he didn't go back?

12 A] I believe as we, as we started interviewing the alibi wit-  
13 nesses, it became apparent that he didn't go back after lunch.

14 Q] I see. Okay. So I believe in the testimony, or could you  
15 characterize in what you're saying about Mr. Misskelly is that  
16 he was uncommunicative?

17 A] He wasn't uncommunicative in that he couldn't talk, but he  
18 couldn't talk in a narrative fashion. He could, uh, you would  
19 have to give him like multiple choice questions and then he  
20 would pick one of the multiple choice questions. And the thing  
21 that bothered me the most about my early, uh, contact with him  
22 was that he kept getting the victims mixed up. And of course,  
23 at some point I got the autopsy reports and I knew which  
24 injuries were to which victim, and he kept insisting that it was  
25 the other way around and I knew that was going to be a very big

1 problem, uh, in trying to get him to testify against his co-  
2 defendants. But that's just one example, of many.

3 Q] Well, but from the time until you first met with him until  
4 you had your epiphany in September, he pretty much maintained  
5 that he was in fact guilty?

6 A] He said he was there.

7 Q] That he was there?

8 A] And saw what had happened to the kids.

9 Q] And then some of the details were fuzzy for some how some-  
10 times changed?

11 A] They changed every time I spoke to him.

12 Q] And you made tapes of these interviews?

13 A] I think I made one tape in August.

14 Q] The August 19<sup>th</sup>?

15 A] August 19<sup>th</sup> and then there was the video tape with Dr.  
16 Wilkins.

17 Q] Dr. Wilkins. Did you make any tapes prior to August 19<sup>th</sup>?

18 A] If I did, they would be in my file.

19 Q] Okay. Did you make notes as to what Misskelley told you  
20 prior to that August 19<sup>th</sup> tape?

21 A] Again, I'm not trying to be coy. If I did, they would be  
22 in my file.

23 Q] Okay?

24 A] And I haven't seen them for years, if they exist.

25 Q] Now in your previous testimony you said that this epiphany



1 was sort of was comprised of several parts. One of them was the  
2 fact that the DNA that you thought linked Misskelley to the  
3 crime on a T-shirt of his, actually was inconclusive and was to  
4 seven percent of the population and was consistent with his ex-  
5 planation and it matched him, so it was consistent with his ex-  
6 planation?

7 A] The explanation that Mr. Fogleman, Judge Fogleman, gave me  
8 was that it could be Jessie's or that it could be the victim; I  
9 think it was Moore, and that he did not intend to use that at  
10 the trial.

11 Q] Okay?

12 A] So I immediately shifted my focus, uh, away from that and  
13 started concentrating my time on the confession.

14 Q] All right. Well, because, and Jessie had maintained that  
15 entire time that he didn't get any blood on him and that he gave  
16 an explanation as to why, and he never wavered from that ex-  
17 planation, did he?

18 A] No, sir.

19 Q] And he never told the police that he had blood on a T-shirt  
20 from this, did he?

21 A] I don't think so.

22 Q] Well, so that was part of the epiphany, and the other part  
23 I believe that you said last time was in this September meeting  
24 that you had with him where you wrote a memo, there's no tape of  
25 that, there's just a memo that you wrote; correct?

1 A] That's my understanding; yes, sir.

2 Q] Okay. That you realized that Jessie thought you were a  
3 policeman?

4 A] He told me that, uh, at the jail cell in Piggott one day,  
5 but I don't think it was that day, and the reason I say that is  
6 because I don't think it's in that memo. It seems to me that  
7 that may have occurred simultaneously or about the same time  
8 that Dr. Wilkins, uh, began conducting his tests on Mr. Miss-  
9 kelley.

10 Q] Well, that was in December of '93; correct?

11 A] Yes, sir - - I don't, I don't remember the date. Maybe my  
12 notes in my file reflect it, but, uh, I remember again, quite  
13 vividly, uh, that Mr. Misskelley said "I thought you guys were  
14 cops." And I asked him if he knew what a lawyer was and he  
15 didn't even understand the concept of what a lawyer was.

16 Q] Okay. Well, but you said in your testimony that it was in  
17 September that you realized, not that he told you, you realized  
18 he thought that you were a policeman?

19 A] It was at some point; yes, sir. Again, the exact date, I  
20 can't tell you. If it was in my memo, obviously, it would have  
21 been that day. But, uh, it was some time in that area.

22 Q] Okay?

23 A] I hope that I have made a note about it in my file some  
24 where.

25 Q] Well, what I would like for you to do is, I would like for

1 you to have access to your file, because I have looked through-  
2 out your entire file and I cannot find such a memo.

3           MR. HOLT: And I would ask that the judge keep  
4 the record open so that this witness can in fact  
5 peruse the file to determine whether or not there is a  
6 memo of some sort that either gives a date or a  
7 notation of that particular event.

8           THE COURT: All right.

9 CROSS-EXAMINATION, continuing:

10 Q] If it's not in there, then I didn't make a memo.

11 A] Well, I couldn't find it, but your writing is, I mean, I'm  
12 not - - you know, I didn't write the notes. You wrote the notes  
13 and I think it would be easier for you to recognize something  
14 that you wrote. Now whether it would be easier for someone to  
15 recognize what Mr. Crow wrote is another matter entirely?

16 A] I don't think even Mr. Crow can read his own handwriting.

17 Q] Okay. I'm trying not to get ahead of myself, but I find  
18 myself at this point, so I'm going to go ahead and ask you about  
19 it, uh, we played the tape of the August 19<sup>th</sup> meeting between you  
20 and Mr. Misskelley was played in court last time and it was  
21 played - - I don't think that it is - - the transcript of that  
22 is part of the exhibit, is part of the transcript?

23 A] I believe that's correct.

24 Q] Okay. Let's go back to the billing records as kind of a  
25 point in reference?

1 A] All right, sir.

2 Q] I believe we were on page 2 of June the 8<sup>th</sup> and it appeared  
3 as though that this was both you and Crow in terms of meeting  
4 with the client. "June 9<sup>th</sup>, research change in venue and calls,"  
5 and then we get down to June the 10<sup>th</sup> and we have "conference  
6 with attorney Price and review statement, two and a quarter  
7 hours." What was your working relationship in terms of this  
8 case at that point with this conference that you had with Val  
9 Price, who I believe at that point had been appointed to repre-  
10 sent Damien Echols?

11 A] This seems to jog my memory, but I think that this - - Mr.  
12 Price, for some reason had a copy of Mr. Misskelley's confession  
13 to the police and he provided a copy of that to me. He probably  
14 faxed it to me and, uh, and then I reviewed it probably at that  
15 time.

16 Q] So "conference with Price" is sort of a short end of the  
17 stuff and then perhaps he - - and you're right, though - - this  
18 does kind of jog your memory.

19 A] It does; yes, sir.

20 Q] And then the review statement was probably the bulk of  
21 that?

22 A] I think that was the lion's share of it at the time; yes,  
23 sir.

24 Q] Okay. "Short phone conference with Jessie, Sr.," at that  
25 point, uh, I'm not going to ask you if you recall it - - you

1 don't recall - - well, I will. You don't recall what that was  
2 about, necessarily, do you?

3 A] No, I have no idea. I know why Mr. Philhours called me.

4 Q] Why is that?

5 A] Because, uh, he called me to advise me that Mr. Davis and  
6 Mr. Fogleman were not happy about, uh, Mr. Misskelley, Sr.  
7 giving press conferences on the front porch of his trailer every  
8 evening on the news and that if there was going to be any type  
9 of negotiated plea in exchange for his testimony, that I needed  
10 to put a stop to that.

11 Q] And this was fairly early on in the case; correct?

12 A] Yes, sir.

13 Q] Okay. Page 3. The first thing under June 11, '93, is a  
14 "two and half hour conference with client." It doesn't appear -  
15 - I can't extrapolate that, maybe you can - - it doesn't appear  
16 as though you and Greg Crow?

17 A] Sometimes we went together; sometimes I went by myself.

18 Q] Right?

19 A] I just couldn't tell you for sure.

20 Q] But it's not, but it's only billed under one line. I mean,  
21 we had, previously we had the same day, same time, we had time  
22 that was billed and if both of you went, both of you would bill  
23 your time?

24 A] I think that's a correct assumption; yes, sir.

25 Q] Okay. And then on June 12<sup>th</sup>, it says that you have a

1 "conference with attorney Greg Crow regarding statement"; is  
2 that correct?

3 A] Yes, sir.

4 MR. HOLT: Judge, here's the -- I don't know how  
5 the Court wants to do this, exactly. This is file  
6 number 11 and I'm taking it to be old, because it's in  
7 the legal size, but first of all, let me ask Mr.  
8 Stidham...

9 CROSS-EXAMINATION, continuing:

10 Q] ...did you, was this in a legal-sized folder with a numeric  
11 tag on it; was that your file system?

12 A] That's my file system; yes, sir.

13 Q] Okay. And so this should correspond to anything else some-  
14 one who had it, possession of the file, as they went through it  
15 and they saw "File 11" they could write it -- it says here  
16 "attorney notes and memos" so they could say that's what this  
17 is?

18 A] That's where I put them all; yes, sir.

19 Q] Okay. And of course, as the case ends or as the case goes  
20 to appeal, things sometimes don't get as neatly put in as this  
21 case?

22 A] And there's all of my legal pads that are missing.

23 Q] I see. I didn't know -- there are various questions that  
24 I want to ask about items in this, uh, I'd like to make it, and  
25 like I said we had talked earlier, and I don't see the need to

1 make all twenty boxes an exhibit.

2           MR. ROSENZWEIG: If I could get clarified for the  
3 record, the problem is, is that taken from one of the  
4 boxes?

5           MR. HOLT: Yes.

6           MR. ROSENZWEIG: Okay.

7           MR. HOLT: And it's listed on here, and it's  
8 everything...

9           MR. ROSENZWEIG: ...identify for the record what  
10 the index is.

11           MR. HOLT: Okay. It would be box A with a  
12 section eleven.

13           MR. ROSENZWEIG: Okay.

14           MR. HOLT: That's Exhibit #6.

15           THE WITNESS: And again, for purposes of the  
16 record, I, I did not prepare that index. That's not,  
17 that's not my - - I don't believe I have ever seen  
18 that document before.

19           MR. HOLT: Okay.

20           THE WITNESS: It corresponds with mine.

21           MR. HOLT: Well, I can't lay my hand on yours  
22 right away. I think it's in here.

23           THE WITNESS: Mine would be in a different font  
24 and then as years went by, I would start handwriting  
25 on top of the actual...

1           MR. HOLT: ...yours, I think, is in Courier, or  
2 something like that.

3           THE WITNESS: Yes, I think, uh, it is that old  
4 Professional Write, I think is the name of the  
5 software.

6           MR. HOLT: Well, we'll get to that - - I think  
7 it's in here. This is going to be difficult. And what  
8 I would like to do, I would like to use my tabs as a  
9 sub-identification on this.

10           I want the whole thing in the record and this is  
11 something I think Mr. Stidham is going to have to look  
12 through for any particular memo.

13           THE COURT: Is there any objection to the offer?

14           MR. ROSENZWEIG: Excuse me?

15           THE COURT: Is there any objection to the offer  
16 of this file?

17           MR. ROSENZWEIG: No, assuming that Mr. Stidham  
18 identifies it as being his, then there will be no  
19 objection. I assume that since Mr. Stidham said that,  
20 he can identify the file and it appears to be his.

21           THE WITNESS: I can identify the folder. I  
22 obviously haven't seen the documents inside yet.

23           MR. ROSENZWEIG: And, and anything that he  
24 identifies as relating to the case, then we would have  
25 no objection to it, unless somehow some foreign



1 document got in there.

2 THE COURT: Right. I understand that.

3 MR. HOLT: And I, uh, in terms of something that  
4 I have tabbed, should I move for a separate intro-  
5 duction? Would that make it easier?

6 THE REPORTER: If you would, why not just go by  
7 12A, 12B, 12C...?

8 MR. HOLT: Okay.

9 THE COURT: Does that appear to be your file?

10 THE WITNESS: Yes, Your Honor.

11 THE COURT: All right, it may be received.

12 (WHEREUPON, State's Exhibit #12 was admitted and received into  
13 evidence and is appended on page.)

14 MR. HOLT: If we could give him just a moment to  
15 - - I don't think any of this right now, the loose  
16 materials, but if you will, just kind of go through  
17 it?

18 THE COURT: All right, let's take a ten-minute  
19 recess and give him an opportunity to go through the  
20 file.

21 MR. HOLT: Okay.

22 THE COURT: Court will be in recess ten minutes.

23 (WHEREUPON, a recess was taken; proceedings resumed as follows,  
24 to-wit:)

25 CROSS-EXAMINATION, continuing:

1 Q] This does appear to be your attorney notes?

2 A] Yes, sir. Mine and Mr. Crow's. Also, I recognize the  
3 handwriting of my paralegal at the time.

4 Q] I see. There was one document that had three initials at  
5 the top, "PAC"?

6 A] If I saw the document in context, I might be able to say,  
7 but - - oh, PAC would be Pam Crosskno, secretary.

8 Q] Okay. So she would have either transcribed something or  
9 would she have taken notes at some particular incident - - we'll  
10 get to that later.

11 A] I'm pretty sure that she wasn't employed until after the,  
12 maybe during the appeal process or something. I don't think she  
13 was there when we were trying the case. I may be wrong about  
14 that.

15 Q] We've talked about the index having been prepared by sub-  
16 sequent lawyers in this case, based upon receiving your file. I  
17 show you what's been marked as Exhibit 12A and ask if you can  
18 identify this document, and there may be other similar ones, as  
19 well?

20 A] (Witness examining same.) Yes, this is a, uh, a document  
21 that, uh, I prepared on my computer and this blue ink in the  
22 right hand, upper right-hand corner, is the, uh, actual file  
23 name on my old computer system. And then as the file began to  
24 grow, uh, as we got closer to trial and post-trial, I just began  
25 to make handwritten notations on there, as opposed to

1 typewritten ones. But this is my handwriting.

2 Q] Okay. And that meant as necessarily as a final copy of  
3 that?

4 A] I couldn't tell you for sure.

5 Q] Okay. But that was prepared in preparation of transmitting  
6 the file to the other attorneys?

7 A] No, I don't think so. I, I don't remember preparing any  
8 kind of index, other than just saying - - in fact, I think there  
9 probably is a file over it that says "Index" on it, or maybe  
10 this was just on the front of it. But I don't remember prepar-  
11 ing an index for them.

12 Q] Okay. So there could be a separate file folder in that  
13 same file case?

14 A] It's possible; yes, sir. And obviously, they prepared  
15 their own, based on mine, uh, because that's not my font, or  
16 there is stuff in there that I don't even recognize.

17 Q] Okay.

18 MR.HOLT: Let me get the file back from you.

19 THE WITNESS: There's part of it right there.

20 CROSS-EXAMINATION, continuing:

21 Q] Now while a lot of legal pads went to comprise this  
22 particular file, uh, there's no indication that, or you're not,  
23 you don't believe that this is all of the legal pads or the  
24 notes that you made during the course of your representation?

25 A] I believe it is; yes, sir.

1 Q] Okay. What was the procedure in terms of, you know,  
2 exhibit 12 that you identified?

3 A] Is that the index that I prepared?

4 Q] No, I'm talking about the file itself.

5 A] Oh, the entire file?

6 Q] Yeah, this is #12. 12A is the index of it. But Exhibit  
7 #12 that contains in large part either typed memos to DTS; I  
8 assume that's you?

9 A] That's me; yes, sir.

10 Q] From GLC; Greg Crow?

11 A] Greg Crow.

12 Q] Or vice versa, or memo to file, for example, some typed no-  
13 tations, but in large part it consists of legal pads and hand-  
14 writing that is legible and some handwriting that is illegible.

15 A] Mr. Crow's is completely illegible, and mine is very close  
16 to being that. Most of those were taken, I think as I was  
17 reviewing real quickly during recess, a lot of those appear to  
18 be taken during the actual trial itself.

19 Q] I see. Are you talking about the loose ones?

20 A] Yes, the loose ones, and also, some of the ones that were,  
21 uh, fastened to the file.

22 Q] Okay. What was your procedure for compiling this, uh, I  
23 guess what I mean to say is that when you had taken notes at one  
24 particular time or another, did you, for instance, did you take  
25 this file folder to the jail with you?

1 A] That file folder didn't even exist until probably after  
2 September '93 epiphany, because prior to that point, we had two  
3 boxes. One that was stuff that we called "incidental," uh, and  
4 you'll notice on the exhibit that you just introduced and one of  
5 the last entries in my handwriting is "incidental."

6 Q] Uh-huh?

7 A] We had a box that was called "incidental," and then we had  
8 a box that was stuff that was related to the confession and that  
9 we thought that was actually relevant. The rest of it was just  
10 other people that the police interviewed, talked to, and I would  
11 read it, Mr. Crow would read it and then we would basically  
12 throw it in the box. And after September 27<sup>th</sup> when we changed  
13 strategies, that's when I determined that it was very important  
14 to start indexing the file. And that's the result, is those  
15 legal sized folders with the numbers on them and the index that  
16 I prepared.

17 Q] I see. In terms of early on in the case you said that one  
18 of your objectives was to get Jessie ready to testify, or some-  
19 thing to that effect; is that correct?

20 A] That was the only objective.

21 Q] Okay. So anything that had to do with Jessie's version of  
22 the events that ancillary to the fact that he said that he was  
23 there, was important, was it not - - I mean, it wasn't  
24 incidental?

25 A] No, it got put in the box that we deemed relevant to the

1 facts at hand, uh, through the *America's Most Wanted* tips and,  
2 uh, the interviews of truck logs, uh, anything of that nature  
3 that I didn't feel like were important in preparing Mr. Miss-  
4 kelley to testify. We just kind of tossed those aside, but then  
5 suddenly in September, late September, we realized that we had  
6 to go back through this stuff all over again.

7 Q] I show you what's been marked as 12B and ask if you can  
8 identify that?

9 A] (Witness examining same.) Yes, sir. It is a memo that I  
10 prepared for the file and for Mr. Crow and my two paralegals.  
11 And it's one that appears to be when I started indexing the  
12 file.

13 Q] Okay. So that one actually does have a date on it and it  
14 corresponds with your testimony, actually?

15 A] It actually corroborates exactly what I just testified to.

16 Q] Okay. And 12A is there next to you and it doesn't contain  
17 a date, but it does differ; correct?

18 A] Uh, it's the same up until item 15, and then that's when I  
19 started making handwritten notations. And at some point I would  
20 assume, I didn't have a chance to go through my entire file  
21 there, but I assume that my secretary or I probably did the  
22 entire index completely on the computer. But this one, State's  
23 Exhibit 12B, it shows, uh, the discovery documents that as I  
24 stated, it had "relevant," or "incidental." That was our index  
25 prior to September 25<sup>th</sup>.

1 Q] Okay. I don't know exactly where this starts or stops, but  
2 I do have some notation by Mr. Crow - - Mr. Crow has in fact  
3 used this file and made notations that are somewhat more  
4 illegible than the notes, he's identifying them. But I want to  
5 mark part of this file as Exhibit 12C and we're going to need to  
6 put it together because it appears to be notes that were - - and  
7 several times, I assume when you interviewed Jessie, if you took  
8 notes or made memos to what Jessie said, it would be more than  
9 one page; is that correct?

10 A] Again, I didn't have time to go through everything but, uh,  
11 if I made a memo or a note, I usually put the date and the time,  
12 uh, maybe not the time, but the time would be in my billing  
13 records.

14 Q] All right.

15 A] It shows how much time, but I would normally, in my  
16 practice, would have been on any memo was to date it, uh, so  
17 that it could be properly filed.

18 Q] Okay. And this file was prepared, so the earliest thing  
19 tabbed into this, or two-hole punched into this folder is a memo  
20 bearing the date 6/4/93, and it says "regarding criminal pre-  
21 trial," and it says "set for trial this term: Lamar, Gurnsey,  
22 Newboles, Hotchkiss, Brown," and it's basically just business  
23 about other clients or other people you were representing?

24 A] Yes.

25 Q] Well, let's just start from the beginning here.

1                    MR. HOLT: I hate to be so tedious, but I need to  
2                    get this into the record.

3 CROSS-EXAMINATION, continuing

4 Q] This is the first thing that's two-holed punched in the  
5 file and what's marked as 12C. Could that just be what's typed  
6 on here perhaps is, I mean, it's essentially a scratch page and  
7 it has numbers that may relate to this particular case?

8 A] (Witness examining same.) Yes, what it looks like is that  
9 would have been a criminal pre-trial in Greene County and it  
10 appears that Mr. Crow asked Ms. Krospt to give us a list of  
11 cases that were set for trial that term and, uh, and on that  
12 memo I just happened to start scratching things, uh, phone  
13 numbers, uh, there's that Tom Hall guy again, who I still don't  
14 know who he is, uh, looks like I wrote down the sheriff of Crit-  
15 tenden County's name, uh, and it looks like maybe Mr. Misskelley  
16 was in Helena being housed. And I wrote down the name of the  
17 prosecutor, whom I had never met, Mr. Fogleman. But that just  
18 happened to be the piece of paper that I had in front of me when  
19 I was making notes, I guess.

20 Q] Okay?

21 A] The other stuff has nothing to do with the case.

22 Q] And so you recognize 12A, B and C as being your documents?

23 A] Yes.

24                    MR. HOLT: We would move for introduction of  
25                    those.



1                    THE COURT: All right, they may be received with-  
2                    out objection.

3 (WHEREUPON, State's/Respondent Exhibit #12A was admitted and  
4 received into evidence and is appended on page .)

5 (WHEREUPON, State's/Respondent Exhibit #12B was admitted and  
6 received into evidence and is appended on page .)

7 (WHEREUPON, State's/Respondent Exhibit #12C was admitted and  
8 received into evidence and is appended on page .)

9 CROSS-EXAMINATION, continuing:

10 Q] The next thing that's in this file is what's been marked as  
11 State's Exhibit 12D; can you identify that?

12 A] (Witness examining same.) That would be a document pre-  
13 pared by Mr. Crow. I can make out some of it.

14 Q] Well, that with, continue to page through it if you would?

15 A] Okay.

16 Q] Go ahead and identify, and I think he has initialed some of  
17 that as belonging to him as something he prepared. But do you  
18 see anything else in there that's in different handwriting?

19 A] Yes, sir.

20 Q] Okay. Do you recognize that?

21 A] Yes, sir, I do.

22 Q] Whose handwriting does that belong to?

23 A] The handwriting is Karen Nobels.

24 Q] Okay?

25 A] I'm fairly certain. It's been a long time, but that

1 appears to be her handwriting.

2 Q] Did she, was she present during the interview at that time?

3 A] Sometimes she or Vicky would go with us, uh, and take  
4 notes.

5 Q] I see. Do you happen to know where she is located now?

6 A] Uh, I think she's still in Paragould, but I don't know  
7 where.

8 Q] You don't have an e-mail address on her?

9 A] I think I actually have a phone number for her.

10 Q] Okay. If you would at some point, if we could have that?

11 A] Okay.

12 Q] Okay, if you would, continue to page through and see what  
13 you recognize?

14 A] This handwriting, I have no idea.

15 Q] Do you know when that was prepared? I didn't see a date on  
16 that.

17 A] This looks like post-trial to me. And the reason I say  
18 that is because it makes reference to "whiskey bottle."

19 Q] Okay. Well, but there's no date?

20 A] No date.

21 Q] If you would, page through the rest of it. Do you see any-  
22 thing in there that you recognize in your handwriting?

23 A] This appears to be Mr. Misskelley's handwriting - - there's  
24 no page numbers on this.

25 Q] Right.

1 A] This is Ms. Krospt's handwriting and then the last page is  
2 Mr. Crow's handwriting. None of it this is mine.

3 Q] Okay. I show you what's been marked as State's Exhibit 12E  
4 and ask if you can identify that document?

5 A] (Witness examining same.) Yes, sir.

6 Q] What is that?

7 A] That appears to be my notes from an interview with Mr.  
8 Misskelley on June 11<sup>th</sup>, 1993.

9 Q] And we are back to where I wanted to get with the time  
10 records. On page three of the time records you have June 11<sup>th</sup>,  
11 1993 "conference with client." Would this in fact be the notes  
12 that you made during that conference?

13 A] Yes, it would.

14 Q] Okay. And do you know when this got put in the file?

15 A] I assume as soon as I got back to the office.

16 Q] So did you ever take it with you back to the jail?

17 A] This particular statement?

18 Q] Yes?

19 A] I have no idea. I just don't know.

20 Q] Okay. Do you know if that statement was ever reduced, uh,  
21 was ever put into a printed-type document?

22 A] Not unless it's in that folder.

23 Q] I haven't been able to locate it.

24 A] Then it wasn't, then.

25 Q] Okay. I can't really, uh, if you would, read what the

1 notes that you made with regard to that meeting that you had in  
2 those two and half hours with Mr. Misskelley?

3 A] Do you want me to read the entire document?

4 Q] Yes, I do. Just to make sure - - you have good hand-  
5 writing, but I can't make out every point.

6 A] It'll take a little time, but I'll see what I can do here.  
7 I made notes in paragraph form and paragraph one states that  
8 "seen picture of three b's," which was an abbreviation for  
9 boys."

10 Q] What was "C" in abbreviation?

11 A] C?

12 Q] Was that your client?

13 A] I'm not sure what "C" - - I'm sorry.

14 Q] Well, you started off, it says - seen pictures of three b's  
15 - - oh, "seen picture of three b's about one week before murder"  
16 for instance, down on paragraph 3, I thought you were - - we'll  
17 get to that.

18 A] Okay. I'm sorry. I obviously wasn't speaking clearly  
19 enough.

20 Paragraph one: "Seen picture of three b's," which means 3 boys,  
21 "one week before murder at cult meeting."

22 Paragraph two: "At cult meeting he recognized three boys, but  
23 couldn't remember where he," horrible grammar, "where he seen  
24 them until the picture was in paper."

25 Q] Are you dictating this?

1 A] No, I'm writing it as he is telling me.

2 Q] I mean, exactly, you're writing it as he is telling you.

3 A] Well, to the best I can.

4 Q] Well, you wouldn't necessarily say "seen"?

5 A] I don't have the best grammar in the world, so it's  
6 possible that that's my word instead of his.

7 Q] It's more likely that he in fact used the words "I seen"?  
8 That's common parlance among people who don't speak good  
9 English?

10 A] It's possible. I think that says "three teens were in  
11 water. Damien hollered at three boys, client," C, which is  
12 short for client, "and Jason hid in weeds. Damien hit blonde-  
13 headed boy and then other two started hitting Damien." And the  
14 other two would be reference to other victims. "C," being  
15 client, Mr. Misskelley, "and Jason came out and all started  
16 fighting."

17 Paragraph 4 states that: "C," again referring to Mr. Miss-  
18 kelley, "started hitting boy in Scout uniform. J," which would  
19 be, uh, stand for Jason, "started hitting the other boy."

20 Paragraph 5: "Damien hit the blonde-headed boy with stick, un-  
21 conscious, bleeding a little bit."

22 Paragraph 6: "Damien then went to Jason and other kid. Damien  
23 started hitting this boy and Jason went over to the blonde-  
24 headed boy and stuck his dick into the boy's mouth."

25 Paragraph 7: "Client," it actually says 'C,' but it's obvious-

1 ly reference to the client, "kept hitting boy Scout and knocked  
2 him out unconscious, still breathing. C," being client, "was  
3 sure he was still breathing."

4 Paragraph 8: "The C," client, "went on to Damien and helped  
5 Damien hit the other boy."

6 And then it goes to page two. Paragraph 9: "Damien went to Boy  
7 Scout, pulled his pants down and screwed him in the ass."

8 Paragraph 10: "After Jason screwed blonde boy in the mouth, he  
9 screwed him in the butt. After he screwed him in the butt, he  
10 cut off blonde-headed boy's penis."

11 Paragraph 11: "After that, client realized it was time to stop.  
12 Client stopped hitting other kid. Client went over to Boy  
13 Scout, he was saying 'help us, help us.'"

14 Paragraph 12: "Client told Damien 'it's time to stop.' Damien  
15 said, 'No, we're going to,' - - I can't read my own writing.

16 Q] You're taking it down pretty fast weren't you?

17 A] Yes, and of course, my handwriting is not the best. It  
18 says, 'No, we're going to hide this,' or 'We're going to like  
19 this,' I think is actually what it says. "Client helped Boy  
20 Scout up, Damien knocked client and boy down. Client told  
21 Damien and Jason to stop hurting boys."

22 Paragraph 13: "Client walked away ten to fifteen feet and then  
23 came back."

24 Paragraph 14: "Damien screwed Boy Scout again. Jason stabbed  
25 one of the little boys in the face."

1 Paragraph 15: "Client and Damien and Jason tied all boys up  
2 with their own shoestrings. Client choked Boy Scout until he  
3 quit moving.

4 Paragraph 16: "All but the blonde was still alive. Client  
5 didn't choke blonde."

6 Paragraph 17: "Damien and Jason threw them in water. Saw boys  
7 kicking around in water."

8 Paragraph 18: "Client was afraid to go back and help, so he  
9 left."

10 And then the final page doesn't have any numbers with a para-  
11 graph. "No one ever mentioned killing anybody in cult. Damien  
12 would try to say voodoo stuff and try to," it says, "try to  
13 dogs, cats and snakes from the dead." I'm not sure exactly what  
14 that means. "Damien stuck his tongue in the skull of a bird."  
15 And that's the end of my notes.

16 Q] And you did, according to your practice, you testified the  
17 date - - what is the date on that?

18 A] June 11<sup>th</sup>, 1993.

19 Q] So this isn't exactly the "uh-huh," "huh-uh" uncom-  
20 municative Jessie Misskelley that we've heard about in that  
21 interview?

22 A] Actually, it was, uh, because I had to ask him the  
23 questions and he would tell me which boy did what to who, and of  
24 course, as I just read, uh, he insisted the blonde-haired boy  
25 was the one who had been castrated, which I knew wasn't the case

1 from the autopsies, uh, and of course, this caused me great  
2 concern.

3 Q] Do you think that he could have just miss-remembered it?

4 A] I don't know how anybody could miss-remember that dramatic  
5 and traumatic. Uh, there were two boys who were brunette, uh,  
6 dark-haired colored and only one blonde, uh, young men, uh, so  
7 and of course, the other statements, he was back and forth  
8 again, uh, on, on that issue.

9 Q] Well, we'll let the statements speak for themselves. Did  
10 you, uh, he maintained throughout this that he left; that he did  
11 not leave with Damien and Jason, didn't he?

12 A] He, in his first statement to the police on June 3<sup>rd</sup>, uh,  
13 stated, I believe, that he left seven times and came back, uh,  
14 and, uh, he...

15 Q] ...well, now you didn't have the police statement at this  
16 time, did you, on June 11<sup>th</sup>?

17 A] Let me look at the billing record again. Actually, I did,  
18 because Val Price faxed it to me on June 10<sup>th</sup>.

19 Q] Okay. So if you did have this statement that he had given  
20 to the police, are you taking the statement that he gave to the  
21 police as the absolute truth - - are you saying that he  
22 confessed in every detail to the police on that day and then  
23 told you something differently that wasn't the truth?

24 A] I don't think either statement was the truth, and what I'm  
25 testifying is that, that, uh, what he said on June 3<sup>rd</sup> and what



1 he told me and what I referred to in my notes in that exhibit  
2 were, were different in, in many respects.

3 Q] In what respects?

4 A] Uh, well, again, the most obvious, uh, is the, uh,  
5 reference to the blonde-haired boy as the one who was sexually  
6 mutilated. That was the most glaring thing that jumped out at  
7 me and I knew that was wrong and I also knew that when he got on  
8 the witness stand later to testify against his co-defendants,  
9 that the defense lawyers were just going to chew him up on that,  
10 uh, and also, because he couldn't testify in narrative form, uh,  
11 that they were going to tear him up on that.

12 Q] You're writing this and you're just making notes and you  
13 said you dictated this quickly. He's telling you this, he's  
14 telling you this in his grammar. He's telling you what  
15 happened.

16 A] No, that's not what I testified to.

17 Q] Well, you did testify that you're taking this quickly,  
18 you're writing this down what he's telling you?

19 A] I'm making notes but I'm not obviously writing down the  
20 questions that I gave him. And what I would do is I would ask  
21 him a question and if he would give me the wrong answer - - when  
22 I say "the wrong answer" - - something that was different from  
23 what he told the police, I would make him stop.

24 Q] That's not what you testified to earlier. You said you  
25 dictated what he was saying. So you're saying that what you did

1 was you took the police statement in there with you?

2 A] As a reference.

3 Q] As a reference. So you had the police statement with you  
4 and you used that as a reference and he did not follow that  
5 police statement, did he?

6 A] The script was different.

7 Q] It was. And was he trying to, was he trying to implicate  
8 himself one hundred percent when he talked to the police, or was  
9 there some reluctance in him telling the police that he was  
10 involved and the amount of his involvement?

11 A] I would be speculating.

12 Q] Well, based upon your experience as a criminal defense  
13 attorney and we've already gone over this and you agreed with  
14 the proposition that people never start off with how guilty they  
15 are.

16 A] That's common, but it's not always the case.

17 Q] But he said "I was there," didn't he. He told the police  
18 eventually through all of the questioning, "I was there"?

19 A] Actually, he didn't. For the first four or five hours he  
20 insisted that he wasn't there.

21 Q] Now wait a minute. "The first four or five hours." Could  
22 you clarify that, please? What do you mean "the first four or  
23 five hours"?

24 A] The police picked him up at about nine or 9:30 that morning  
25 of June 3<sup>rd</sup> and took him to the police department and according

1 to the officer's notes, he denied any knowledge of the crimes  
2 and he said that he heard that Damien had done it. In fact, he  
3 also said he heard someone else did it, and I can't remember the  
4 name that he gave the police, but, uh, it wasn't until after  
5 they administered the polygraph and told him he was "lying his  
6 ass" off that he then began to state that he was present when it  
7 happened.

8 Q] And that occurred in the space of four or five hours?

9 A] Well, uh, I think the first recorded audio tape started  
10 sometime around 2:00 p.m., uh, if he was picked up around nine,  
11 so three and twelve, so two would be five hours. I don't  
12 remember - - I don't have a copy of the original, or maybe I do,  
13 but I think there is a time when Officer Ridge says "this is a  
14 statement by Mr. Misskelley," I'm sorry. I don't have a copy,  
15 but I think the time is set forth on there. As I recall during  
16 the lunch hour that day, even though they didn't, uh, think it  
17 was important to get his parents to sign a Miranda waiver, they  
18 thought it was important to get Mr. Misskelley, Sr. to sign a  
19 polygraph waiver. And so during the lunch hour, uh, that's when  
20 they tracked down Mr. Misskelley, Sr. So Mr. Misskelley, Jr.  
21 had already been there and been interrogated for three hours at  
22 that point.

23 Q] Three from when?

24 A] Nine to twelve, uh, for the lunch hour and then the poly-  
25 graph was administered after lunch and then immediately after

1 the polygraph, uh, is when they, uh, started intensifying the  
2 interrogation. And I believe the audio tape started sometime  
3 shortly after 2:00 p.m.

4 Q] Well, if it indicates that Mr. Misskelley, and there are  
5 notations in your notes that Mr. Misskelley said they were look-  
6 ing for Misskelley, Jr. at 9:30 and that he was picked up  
7 approximately ten o'clock and that he was read a Miranda warning  
8 form approximately at eleven o'clock and that, you know, they  
9 had been talking to him, but then there was a polygraph release  
10 form at approximately 11:30 and then at 2:44 they start the  
11 tape. And you're saying that he denied up until the time that  
12 they started the tape, or that he denied it up until the time  
13 that they read him his Miranda warnings, or that he denied it up  
14 until the time that they got a polygraph release for him?

15 A] He denied any knowledge of the murders up until the time  
16 they told him he was "lying his ass off" and that he had flunked  
17 the polygraph test. And then when they told him he had flunked  
18 the polygraph test and turned on the audio tape, and uh, again,  
19 I don't know the exact times - - there are exhibits in there in  
20 the record of the trial - - of the date and time he signed the  
21 Miranda warning or whatever, and the date and time that he  
22 signed the waiver of the polygraph, or the consent to the  
23 polygraph, uh, and then when the polygraph test was given, uh,  
24 and then I think there was some gap in time that the officers  
25 actually interviewed him before they turned on the audio tape.

1 You said 2:44?

2 Q] Yes?

3 A] So he had been there for three, four, five hours.

4 Q] Three, four, five hours, I mean, he had been there -- now  
5 he went out with them to locate his father, didn't he?

6 A] Yes.

7 Q] Well, do you have any disagreement with the Supreme Court's  
8 timeline in terms of, or the record in this case, in terms of  
9 his statement that he gave?

10 A] I'm not sure I understand your question.

11 Q] Well, you challenged the statement in your appeal; correct?

12 A] That's correct.

13 Q] And in the record, there was a record of the suppression  
14 hearing that went up on appeal; correct?

15 A] That's correct. I mean, those documents speak for them-  
16 selves, the times that the officer testified that he picked up  
17 Mr. Misskelley, the times that the Miranda warnings were given  
18 and the officers' notes actually reflect that he denied any  
19 knowledge whatsoever of the crime. And what the West Memphis  
20 police were doing at that time is after they would interview a  
21 witness, they would polygraph them and then based on the results  
22 of the polygraph, they would determine whether to interrogate  
23 any further.

24 Q] But he did not deny -- there's nothing in your notation on  
25 June 11<sup>th</sup> that he denied that he did it, up until a certain time?

1 A] I don't think that he even talked about that in this memo  
2 or my notes.

3 Q] The Supreme Court's opinion says, "Detective Allen located  
4 the appellant and brought him back to the station, arriving at  
5 approximately 10:00 a.m. For now it is sufficient to say the  
6 appellant was questioned off and on over a period from 10:00  
7 a.m. until 2:30. At 2:44 and again approximately 5:00 p.m., he  
8 gave statements to the police in which he confessed his involve-  
9 ment to the murders. Both statements were tape recorded."

10 A] I don't have any reason to dispute that, but again, I  
11 haven't looked at, uh, that in many years and haven't looked at  
12 the actual transcript to look at, uh, and again, the officers'  
13 notes state times, too. So, I mean, the record speaks for  
14 itself.

15 Q] But the officers also indicate that that statement started  
16 at 2:44 p.m.?

17 A] That part that they recorded.

18 Q] That they recorded. And what had they been doing before  
19 that?

20 A] Uh, setting the stage for, uh, for him to falsely confess.

21 Q] In your opinion; right?

22 A] In my opinion; yes, sir.

23 Q] Okay. Now but "setting the stage for that," do you mean  
24 that prior to 2:44 he had admitted that he was there; that's why  
25 they turned on the tape, isn't it?

1 A] After the polygraph exam and the polygraph examiner, Mr.  
2 Durham, came out of the polygraph room and told the detectives  
3 that Mr. Misskelley was lying and so they made the decision to  
4 intensify the interrogation and that's when they started using  
5 the psychological tactics with, uh, playing the tape and the  
6 diagram and showing him pictures of the body, one of the bodies,  
7 uh, and that's when they started making the promises and the  
8 threats of lethal injection and the electric chair.

9 Q] Well, now are you sure about that, or didn't Misskelley  
10 clear that up about the lethal injection and the electric chair;  
11 that that happened afterwards?

12 A] It depends on which version, or which story or statement  
13 that you're referring to.

14 Q] Which one are you referring to?

15 A] Well, he was all over the page on that. I mean, he told me  
16 that, uh, uh, they told him that he was going to die in the  
17 electric chair and that it scared him. Uh, later on, uh, at the  
18 ADC and all of this post-trial stuff, uh, he used the term  
19 "lethal injection." He was afraid of lethal injection.

20 Q] But if we were to encapsulate what your defense was from  
21 the time you first did the June 11<sup>th</sup> memo until some time in  
22 September, your idea was that this was, it was time to cut a  
23 deal?

24 A] That's the assumption I made, uh, during my conversation  
25 with Judge Goodson, uh, in fact I think I testified earlier that

1 subject came up and he said "it's not going to take that much of  
2 your time, it's just getting him ready to testify against the  
3 other two; he's confessed and it will be quick and over and done  
4 with." And, uh, so I mean, that's the assumption that I was  
5 working under, up until September.

6 Q] And after September he was telling you something different,  
7 wasn't he?

8 A] Do you mean after?

9 Q] Yes?

10 A] After September, pursuant to that memo that was introduced  
11 - - and I can't remember the exhibit number, I'm sorry, uh, my  
12 memo to the file, uh, basically said that Mr. Misskelley said  
13 that he wasn't there, that he, uh, basically was telling the  
14 police what they wanted to hear, trying to end, uh, the inter-  
15 rogation so he could go home.

16 Q] So from September on you had to base a defense in whatever  
17 way that he wasn't there because that's what he was telling you?

18 A] That's correct. And Judge Burnett set the trial date in  
19 January, so we essentially had October, November and December to  
20 prepare for trial and that's when everything changed and that's  
21 when we started looking for experts and, uh, looking at ways to  
22 attack the, uh, confession.

23 Q] And you had some assistance in that, didn't you?

24 A] Do you mean by way of experts?

25 Q] Well, and just by way of leg-work. You were approached by



1 Ron Lax, weren't you?

2 A] That same day that we had the hearing in Marion and Judge  
3 Fogleman, then prosecutor Fogleman, told me that there wasn't a  
4 clear DNA match, uh, Mr. Lax, whom I had never met, uh,  
5 approached me, uh, and apologized because there had been some  
6 confusion, uh, some of Misskelley's family members were calling  
7 me and telling me that, uh, Mr. Lax's investigators were telling  
8 people that he was working for me and Mr. Crow and in fact, I  
9 quite angrily had called him at his office in Memphis and said,  
10 "Hey, quit telling people that, because you don't work for me; I  
11 don't know who you are." And, uh, he approached me at the hear-  
12 ing that day or at the conclusion of the hearing and said there  
13 was a mix-up, "I'm sorry, uh, can I buy your lunch?" And, uh,  
14 as I recall Mr. Misskelley - - I mean, excuse me - - Mr. Crow,  
15 myself, Mr. Lax and I think Mr. Price and Mr. Davidson, all of  
16 us went to lunch. I think it was at Shoney's.

17 Q] So you'd had the epiphany by then?

18 A] Well, at that point, you know, suddenly, because for weeks  
19 and weeks, uh, Mr. Misskelley, Sr. kept telling me, you know,  
20 basically, he was angry at me: "Why are you not out here inter-  
21 viewing these alibi witnesses, uh, the kid wasn't there, had  
22 nothing to do with it." And I kept telling him, "Well, the  
23 prosecutors have advised me there's a DNA match and your son's  
24 telling me he was there when it happened." And so we weren't  
25 concerned about alibi witnesses. And when I got to the hearing

1 that day and John Fogleman approached me and said, "Hey, Dan,  
2 uh, there's a mistake, uh, that's not what we thought it was,  
3 uh, it could be Mr. Misskelley's blood or it could be the  
4 victim's blood, so we're not going to use that at trial." Uh,  
5 it suddenly, because I had earlier asked Mr. Misskelley during  
6 one of my interviews with him at the jail, "how do you explain  
7 this blood on your T-shirt?" And he said, "Well, it's easy. I  
8 was throwing up Coke bottles and broke them with my fists." So  
9 it was just like a lightbulb going off in my head, you know, the  
10 kid was telling me the truth. That was his blood, and that's  
11 the same thing Fogleman was telling me. And so at this point I,  
12 I began to, to realize that there was something terribly wrong  
13 and, uh, Mr. Crow and I discussed that and we were just  
14 basically stunned and, uh, at that point we had lunch with Mr.  
15 Lax and he, uh, told me about Dr. Richard Ofshe and his work on  
16 the false confessions. And, uh, Dr. Ofshe was also, uh, an ex-  
17 pert on, uh, on cults.

18 Q] Did Ron Lax ever advise you - - did he work for Val Price  
19 and Robin Wadley?

20 A] No, he actually worked for Val Price and Scott Davidson.

21 Q] So he worked for the Damien Echols defense team?

22 A] That's correct.

23 Q] And he really didn't have any interest with your client  
24 testifying against his client, did he?

25 A] Obviously it would have been better for his client if Mr.

1 Misskelley didn't testify.

2 Q] But you were fully aware of that when you talked to Mr.  
3 Lax, weren't you, I mean, it was easy, even though you had been  
4 having conferences and interaction with the other defense  
5 attorneys in this case, you realized that, and especially before  
6 your realization in September, that they had a vastly different  
7 interest than you did?

8 A] Sure. It was obvious.

9 Q] Well, did you receive any ribbing about that at those  
10 meetings, did anyone say anything like "hey, you represent the  
11 snitch," or anything like that?

12 A] No, not at all. Uh, Mr. Lax said he would mail me an  
13 article that appeared in *The New Yorker* magazine, I believe it  
14 was, about, uh, Richard Ofshe. I don't think that Mr. Lax knew  
15 him personally or had ever met him; he just knew of him, uh, as  
16 I recall. And a couple of days later I got a package in the  
17 mail from, uh, Mr. Lax and it had a copy of the article that  
18 appeared in *The New York* publication. And so I just picked up  
19 the phone and, and called Dr. Ofshe and, and told him who I was  
20 and, uh, what was going on and he graciously agreed to take a  
21 look at the confession. So I either mailed or FedExed it to  
22 him.

23 Q] Did you mail or FedEx any notes that you had made, like the  
24 June 11<sup>th</sup> memo?

25 A] No. I did not want to taint, uh, the...

1 Q] ...any subsequent statements that Jessie gave?

2 A] I just wanted him to look at the confession and give me an  
3 opinion on, on what he thought.

4 Q] Just based on that confession? Did you mail him a tape or  
5 a transcript?

6 A] A copy of the transcript. There should be a letter in the  
7 file or in my billing record showing exactly when I did that.

8 Q] I want to just get back to the recording that you made on  
9 August the 19<sup>th</sup> of '93 and you said that the purpose of that  
10 recording was to determine whether or not, I mean, was to  
11 memorialize the fact that you had conveyed some sort of offer to  
12 Jessie?

13 A] That's what the tape reflects; yes, sir.

14 Q] Well, but as a transcript, it's approximately thirty pages  
15 and the first twenty-four deal with him going through some of  
16 the facts of the case?

17 A] Is that in the transcript?

18 Q] It is in the transcript. It starts at 236 of the  
19 transcript of 11/20?

20 A] Is it the 11/20 hearing?

21 Q] Yes.

22 A] Okay. Again, as you might recall, for some reason - - and  
23 I know it happened, because my billing records state that it did  
24 and also, I relayed the offer to Mr. Misskelley, but I have no  
25 independent recollection of ever meeting with Mr. Davis and Mr.

1 Fogleman about the offer.

2 Q] And you've testified to that previously?

3 A] Yes, so I mean, uh, it appears that this is just - - I hate  
4 to use the word "speculation," but my guess would be the prose-  
5 cutors wanted me to clarify certain issues with Mr. Misskelley,  
6 uh, and apparently that's what I was doing before I got to the  
7 meat and potatoes with the offer.

8 Q] And so at that time, you didn't have that realization or  
9 that epiphany on August 19<sup>th</sup>?

10 A] Not yet. No, sir.

11 Q] Okay. And one of the things that you said happened in  
12 September was you realized - - part of the epiphany was the DNA  
13 and part of the epiphany was that he thought that you were a  
14 policeman, and somewhere along the line he says that to you, you  
15 think somewhere closer to the Wilkins interview, I believe is  
16 what you said?

17 A] That is an entire guess on my part. I hope there is some-  
18 thing in my file that memorializes that, but I, I, it's been so  
19 many years, I just don't know. I remember it like it was  
20 yesterday because I was stunned that he didn't even know what a  
21 lawyer was.

22 Q] Well, now, he had been in juvenile proceedings before,  
23 hadn't he?

24 A] Uh, yes.

25 Q] Are juveniles represented by lawyers in juvenile pro-

1 ceedings?

2 A] Always.

3 Q] And so he wouldn't have realized that that was a lawyer?

4 A] The way he explained it to me was that he thought every-  
5 body was on the same team, and that they were all not on his  
6 team. That's the way he...

7 Q] ...oh, so it was sort of a conspiracy against him?

8 A] I don't think Mr. Misskelley can articulate a conspiracy  
9 but, uh, he just said that they were all, you know, that he  
10 perceived every one in the courtroom as being there against him.

11 Q] Is there anyone he might have gotten that from?

12 A] He didn't say.

13 Q] What was the relationship that he had with his father,  
14 especially regarding this incident and the trouble that he was  
15 in?

16 A] I'm not sure that I understand.

17 Q] Well, what did his father - - what did he - - early on he  
18 was telling his father something entirely different than what he  
19 was telling you?

20 A] Yes.

21 Q] As a criminal defense attorney, is that uncommon?

22 A] I had never had a case where that had occurred before, but  
23 I wouldn't characterize it as uncommon; no.

24 Q] So you wouldn't - - just based on human nature, and just  
25 based on your experience as a criminal defense attorney, had you

1 had clients who had - - of any age, really - - who had  
2 difficulty in admitting what they had done in front of a parent,  
3 or perhaps taking a plea and where the State has to recite the  
4 facts, with their parent there?

5 A] I can't recall a specific case but I'm sure that I probably  
6 would have been in that situation at least a time or two, and  
7 just based on human experience and understanding, it's difficult  
8 for anybody to admit to their parents, uh, culpability of any  
9 crime, I think.

10 Q] And his parents were, I mean, they were very supportive of  
11 him, weren't they?

12 A] Uh, well, of course, his mother had been out of his life  
13 since he was four, uh, there was a series of step-mothers or  
14 girlfriends, uh, of his father. But, uh, his father was very  
15 supportive of him from the very beginning.

16 Q] Well, why say "supportive of him"? His father maintained  
17 that he didn't do it?

18 A] Yes. He had had many press conferences to that effect.

19 Q] To that effect?

20 A] On the front porch of his trailer on the evening news, and  
21 that's why I got the phone call from Mr. Philhours, as reflected  
22 in my billing records.

23 Q] And Mr. Misskelley, Jr. couldn't admit to his father that  
24 he had done it?

25 A] He, uh, there was one occasion at the jail where we were

1 interviewing Mr. Misskelley and he was trying to get the story  
2 to - - I, I was trying to get him to give the story to match the  
3 story that he gave the police.

4 Q] Well, let me interrupt you. Now are we sure "matching the  
5 story that he gave the police" is exactly the correct story?

6 A] Well, it was the story that the prosecution was going to  
7 want to hear, because they don't want to have conflicting state-  
8 ments, uh, during the trial, uh, so that was the script that,  
9 uh, we were working with. And, uh, he was telling me it was the  
10 blonde-haired boy who had been castrated and I knew that wasn't  
11 the case. I knew the defense lawyers were going to eat him  
12 alive, uh, on cross.

13 Q] Well, they were going to impeach him on that, certainly,  
14 weren't they, but that wasn't necessarily based upon all of the  
15 other facts that he gave and the details that he gave. That  
16 wouldn't necessarily, based upon that one particular fact, that  
17 wouldn't necessarily turn the tide, would it?

18 A] No, that's not the only fact. There was the fact that he  
19 said there was a brown rope.

20 Q] Well, let's talk about the rope. Now he told the police  
21 that there was a brown rope and he later said he made that up,  
22 didn't he?

23 A] (Unresponsive.)

24 Q] In one of his statements he said - - "yes" or "no" - - he  
25 said, "I made that up" didn't he?



1 A] In one of his statements he did.

2 Q] Okay. And then later, and I believe it's even in the  
3 6/11/93, he talks about the shoe laces?

4 A] (Unresponsive.)

5 Q] He certainly talked about the shoe laces...

6 A] ...are you talking about my notes of June 11?

7 Q] Yes?

8 A] That was my attempt to try to rehabilitate him to get him  
9 back on the script, uh, by saying "are you sure it wasn't shoe  
10 laces?"

11 Q] Well, so you were suggesting things to him; would that be  
12 safe to say?

13 A] I was trying my best to get him ready to testify and I knew  
14 if he got up there and said the little boys skipped school that  
15 day; that it happened at nine o'clock in the morning or that it  
16 happened at noon; that it happened before 6:00 p.m. or 6:30 p.m.  
17 when the boys were last seen riding their bicycles; and if he  
18 said it was a brown rope and all of these other things that we  
19 knew were just completely totally false, I knew that, uh, our  
20 chances of him, uh, being able to successfully navigate, uh, his  
21 testimony were - - I was really, really concerned that he was  
22 not going to be able to pull this off.

23 Q] What do you mean "pull it off"?

24 A] He could not give a narrative as to what happened.

25 Q] Did you have a chance to review the tape or the transcript

1 of Dr. Ofshe's interview with him?

2 A] I haven't in years.

3 Q] Do you know if he mentions the shoe laces or not?

4 A] I don't know without looking at the transcript. That's the  
5 one thing that I haven't looked at in a long time.

6 Q] Well, we're going to play the tape from that. I believe  
7 your billing records indicate that you did in fact transcribe  
8 it?

9 A] I'm sure that I did.

10 Q] I did not see it in the file, but it has been transcribed?

11 A] Actually, uh, I think I noticed the handwritten notes in my  
12 file there, that I had made of it. Maybe that's what I did.

13 Q] Well, the billing record indicated that it was transcribed,  
14 and it was certainly taped?

15 A] I, I'm certain that it was taped; yes, sir.

16 THE COURT: Is this a good spot to stop for  
17 lunch?

18 MR. HOLT: Sure.

19 THE COURT: All right, we're going to take a noon  
20 recess until 1:15.

21 (WHEREUPON, a recess was taken; proceedings resumed as follows,  
22 to-wit:)

23 CROSS-EXAMINATION, continuing:

24 Q] Let's start back if we could to the billing records?

25 A] I think it's right here.

PROPERTY OF ARKANSAS SUPREME COURT/COURT OF APPEALS

**CR 10 00456**

Appellant(s)

Charles Jason Baldwin  
Jessie Lloyd Misskelley, Jr.

v. Craighead Circuit, Western District  
Hon. Charles David Burnett, JUDGE  
CR93-450 (BALDWIN), CR93-47 (MISSKELLEY)

Appellee(s)

State Of Arkansas

25 Volume Supplemental Record Lodged  
3 Envelopes Exhibits  
1 Small Box Exhibits

Writ Returned  
Supplemental Record Filed  
June 11, 2010  
**Leslie W. Steen, Clerk**  
By Renee Herndon

Volume 7

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IN THE CIRCUIT COURT OF CRAIGHEAD COUNTY, ARKANSAS  
CRIMINAL DIVISION

STATE OF ARKANSAS

PLAINTIFF

VS.

CR-93-~~4~~ f506

*Jason Charles Baldwin*  
~~ROBERT LLOYD BISHOP~~

DEFENDANT

**FILED**

APR 21 2010

Ann Hudson  
Circuit Court Clerk

**VOLUME VI of X**

1 Q] If you would - - well, you may need that, too - - the June  
2 11<sup>th</sup>, '93 of your notes, so with these notes that you are  
3 writing, with you saying that you're asking the questions and  
4 then writing out the answer as if it's the question that you  
5 asked?

6 A] I was basically doing the same thing that the police were  
7 doing: trying to suggest the answer to him, giving him multiple  
8 choice options, anything I could think of to do to try to get  
9 him back to his original story so I could get him to testify,  
10 uh, prepare him to testify.

11 Q] Well, now the original story, though, had some twists and  
12 turns in it, didn't it? I mean, he started out saying he was  
13 with Ricky Deese and that he had, you know, some time in the  
14 morning is when this, that he was - - he couldn't have done this  
15 because he was with Ricky Deese; right?

16 A] Well, I'm talking about the actual statement, the audio  
17 statement that he gave the police. That's what I was concerned  
18 about because that was the only thing that was of record as far  
19 as a prior statement, uh, and that if he testified against his  
20 co-defendants, that if he deviated from that, then co-counsel  
21 for the co-defendants were going to eat him alive.

22 Q] They were going to impeach him with the statement that he  
23 gave; correct?

24 A] If it was different.

25 Q] There were some aspects of it that were different?

1 A] And there were many aspects of it that were just entirely  
2 wrong and, of course, I knew that.

3 Q] Did you ever make a memo to that effect, of all the  
4 different things that were wrong?

5 A] Uh, post-trial, I did.

6 Q] But not when you were getting him ready to testify?

7 A] If I did, it would be in that folder; that big file.

8 Q] Well, we're going to give you an opportunity to look for  
9 that.

10 A] Okay.

11 Q] But on 6/11, that's when you took this three-page, these  
12 three pages of facts that he related to you?

13 A] These are notes that - - my conversation with him; yes,  
14 sir.

15 Q] And so he agreed that this either happened or he related to  
16 you - - did you have that with you when he gave you the state-  
17 ment on February 8<sup>th</sup> after he had been convicted?

18 A] Did I have this with me?

19 Q] Yes, did you have any of your files that had memos of  
20 exactly what he had told you before your epiphany?

21 A] I don't think I had anything. In fact, that's why we had  
22 to have this faxed from West Memphis Police Department to the,  
23 to the prison.

24 Q] When you say "this," identify that for the record?

25 A] Exhibit #43.

1 Q] Okay?

2 A] But that number may have changed because I think I read in  
3 the transcript there was some disparity among the exhibits.  
4 It's the crime scene map that was faxed to the prison, uh,  
5 during Misskelley's statement that he gave there. I think it  
6 was February 8<sup>th</sup>.

7 Q] Okay. And you recorded that statement and that statement  
8 has been played at a prior hearing?

9 A] I believe that's correct. Yes, sir. In fact, I think  
10 that's - - I was being examined about this very exhibit when I  
11 stepped off the witness stand in November.

12 Q] Okay. With regard to that testimony that you gave, if you  
13 could, if you could refer to the hearing transcript...

14 A] ...of November 20<sup>th</sup>?

15 Q] Yes, page 99?

16 A] Page 99 would be on the 19<sup>th</sup>, I believe. All right.

17 Q] On line 8 it starts with Mr. Davis: "And as a conversation  
18 with your client and in the course of representing him, that  
19 would be a tape or a taped conversation..."

20 A] I'm sorry. I'm in the wrong transcript. My page 99 is the  
21 Wilkins/Misskelley transcript. Perhaps it's the September - -  
22 what line, sir?

23 Q] Page 99, line 8.

24 A] My 99 of September is not that. This one says November  
25 19<sup>th</sup>.

1                    MR. ROSENZWEIG: It's page 234 in our transcript.  
2                    I'll let you read mine.

3 CROSS-EXAMINATION, continuing:

4 A] All right, you said line 8, sir?

5 Q] Yes, line 8.

6 A] All right.

7 Q] I will read. Mr. Davis says: Question: "And as a  
8 conversation with your client and in the course of representing  
9 him, that would be a tape or a taped conversation that unless a  
10 situation like this cropped up, the State would never have  
11 access to or be privy to it?"  
12 And your answer: "Uh, had I been thinking clearly fifteen years  
13 ago, I don't know that I would have made that tape. Uh, if I  
14 had of known we would be sitting here today, uh, listening to it  
15 and talking about it, uh, it probably wasn't the best way for me  
16 to handle it."

17 What did you mean by that?

18 A] I just never dreamed that sixteen years later we would be  
19 sitting here listening to tapes that, uh, after Judge Burnett  
20 granted my client immunity and allowed the prosecutors to have  
21 unfettered access to him, I just never dreamed that we would be  
22 sitting here doing this.

23 Q] Well, are you saying, you say: "I don't know that I would  
24 have made that tape"; what does that mean - - that you would not  
25 have taped the conversation. Isn't a tape the most accurate



1 depiction of what the conversation, what took place in the  
2 conversation?

3 A] No question about that.

4 Q] Okay. Well, why would you express reservations about  
5 having a tape?

6 A] Because we're sitting here doing what we're doing...

7 Q] ...well, wouldn't we be sitting here anyway, doing what  
8 we're doing, except you would be able to testify from just your  
9 memory or what you believed to be, or whatever your opinion was;  
10 isn't that true?

11 A] Sure. I mean, I can't argue with that.

12 Q] And you wouldn't have had, I mean, without that, he  
13 wouldn't have told you the same things that he told you months  
14 before, would he, and then there would be some sort of  
15 verification of that?

16 A] Every time I talked to him, he told me something different.

17 Q] Well, you've maintained that, but you've never given us any  
18 sort of specifics. You've given us one or two things. For  
19 instance, the brown rope. Now he did tell the police that the  
20 brown rope was what was used to tie them up, but did you ever  
21 consider that the fact that he said a brown rope was because he  
22 didn't want to be the one who was taking the shoe laces out of a  
23 child's shoes to tie them up with, and handing them to someone  
24 else?

25 A] Well, one statement...

1 Q] ...is that a possibility - - "yes" or "no" - - was it a  
2 possibility by saying "brown rope" which he admitted that he  
3 made up?

4 MR. ROSENZWEIG: Your Honor, I object. He was  
5 trying to answer the question and the prosecutor  
6 interrupted.

7 MR. HOLT: He wasn't answering. I'm forming the  
8 questions.

9 THE COURT: Go ahead.

10 CROSS-EXAMINATION, continuing:

11 Q] Was it a possibility that you considered as a defense  
12 attorney that when he said and admitted he had made up the thing  
13 about the brown rope, that he was trying to dodge part of his  
14 culpability in that he helped them take the shoe laces out of  
15 the shoes, but he later said he did?

16 MR. ROSENZWEIG: That just calls for total  
17 speculation.

18 CROSS-EXAMINATION, continuing:

19 Q] But is that a possibility?

20 THE WITNESS: I've already answered the question  
21 before, Your Honor, and he asked me 'do sometimes  
22 people who are being interrogated try to lessen their  
23 involvement,' and I answered, 'yes, that's common.'  
24 Then he asked me to tell him what the differences were  
25 and I was about to answer that question, and he didn't

1 want me to answer.

2 CROSS-EXAMINATION, continuing:

3 Q] Well, what I'm asking you now, Mr. Stidham, was that a  
4 possibility, because we're talking about your effectiveness in  
5 this case, you know, what you did in this case. And I'm asking  
6 you, when he said "brown rope," as part of the mindset of a  
7 criminal defense attorney and you had assumed he was guilty at  
8 that time, did you consider the fact that he said brown rope  
9 because he didn't want to get anywhere near those other two.  
10 Did you consider that?

11 A] Yes, I did.

12 Q] Okay. That's what I'm asking you.

13 A] And then later, obviously, uh, my strategy changed and so  
14 did his many different versions of what happened.

15 Q] They did, didn't they? Did his father had an inordinate  
16 influence over him?

17 A] I don't think so.

18 Q] You don't think so? Well, he couldn't tell his father he  
19 did it, could he?

20 A] Well, he was actually - - and again, this is my opinion...

21 Q] ...well, he said, didn't he say...

22 MR. ROSENZWEIG: ...wait a minute. Your Honor,  
23 I'm sorry; he was trying to answer the question.

24 THE COURT: All right, answer the question.

25 CROSS-EXAMINATION, continuing:

1 A] He told his father the truth that he was being dishonest  
2 with me, just as he was being dishonest with the West Memphis  
3 police.

4 Q] But didn't he also say that he couldn't tell his father  
5 that he did it because his father would disown him?

6 A] That was in March of '94.

7 Q] I don't care when it was...

8 A] ...it was important, Counselor...

9 Q] ...I'm saying when it was as he looks back on the whole,  
10 the whole time period of your representation of him. As you  
11 look back on the whole time period of the representation, do you  
12 not see there are - - were there not some times where he was  
13 affected by what his father said, and by the letters that his  
14 father wrote, and by the letters other people wrote to him while  
15 he was in jail?

16 A] Not that I'm aware of.

17 Q] Well, why did you screen his correspondence that he  
18 received in jail?

19 A] Are we talking post-trial, or pre-trial?

20 Q] Pre-trial. Why did you screen letters that said "we know  
21 you didn't do it; we're waiting for you to come home"?

22 A] I don't know that I did that.

23 Q] Weren't there sticky notes on original correspondence that  
24 say "do not send this to Jessie." Who would have made that  
25 decision?

1 A] Uh, if it's in my handwriting, I guess I did.

2 Q] Well, would you have directed someone else to it, or would  
3 someone in your office have taken that upon themselves?

4 A] Pre-trial, my concern would have been that if letters from  
5 people who I didn't know who they were, were forwarded on to Mr.  
6 Misskelley at the jail, then Mr. Misskelley, who is quite  
7 suggestible and very easy to talk to, might carry on a pen-pal  
8 relationship with someone and that could come back to haunt the  
9 defense later on. That would seem to be the logical reason I  
10 would do that.

11 Q] So Mr. Misskelley is suggestible?

12 A] Yes, sir; very much so.

13 Q] Is he suggestible as to what his father's opinion of his  
14 guilt or innocence would be?

15 A] I think that he was truthful with his father.

16 Q] Well, you think so, but do think he was suggestible as to  
17 what his father thought of him?

18 A] I think he listened to his father.

19 Q] At some point Mr. Misskelley, Jr. said things like "they  
20 were trying to send me up the river the same way they did my  
21 dad." He didn't start saying that for a good while, did he - -  
22 do you recall that sort of statement?

23 A] All of this stuff happened post-trial after he had been  
24 granted immunity, and I still don't understand why - - as I  
25 understand Rule 37 and the *Strickland* standard, I, I should be

1 judged on what I did at trial and on direct appeal. And I don't  
2 understand the relevancy of all of this stuff.

3 Q] Well, you don't get to make objections.

4 A] I understand, but I'm just having a hard time wondering why  
5 you're asking me why did I say that in the transcript, and  
6 that's why, because I never dreamed that, uh, those tapes that I  
7 made during those two weeks when the police officers were  
8 telling him that, uh, I wasn't a very good lawyer, that I didn't  
9 do anything but DWI cases, and promising him sex with his girl-  
10 friend, alcohol, and bringing him cigarettes by the carton, I  
11 never dreamed that we'd be sitting here at a Rule 37 hearing  
12 someday listening to tapes of that.

13 Q] Well, did you ever dream that you would be sitting here  
14 listening to a tape after he is convicted, where he essentially  
15 affirms everything that he said early on in the case when he  
16 said he was there?

17 A] Which time are you talking about?

18 Q] June 11<sup>th</sup>, '03, he said he was there for four months. Now  
19 he was, yes, he was fuzzy on some of the details?

20 A] This is my attempt to get him to get back on script. These  
21 are things that he told me, uh, and despite my best efforts, I  
22 could not get him off the fact that he kept insisting that it  
23 was the blonde-haired victim who had been castrated.

24 Q] You've mentioned that, Mr. Stidham. You've mentioned that  
25 he said that it was the blonde haired one that got cut, that his

1 penis got cut off. Do you not think that anything that happened  
2 post-trial may inform us, or may inform the Court with regard to  
3 your state of mind during the course of your defense of him?

4 A] I suppose it could.

5 Q] Okay?

6 A] That is his Honor's call.

7 Q] I'm showing you what's been marked as State's Exhibit #13.  
8 If you would, page through that?

9 A] (Witness examining same.)

10 Q] Do you recognize what it is?

11 A] Yes, sir, I do.

12 Q] What is it?

13 A] It's my website.

14 Q] Are there various documents that deal with this case, or  
15 various writings by you about this case?

16 A] Most of it is media articles.

17 Q] Well, is it media articles that you participated in?

18 A] Some of them.

19 Q] And what's the purpose of that website?

20 A] Uh, I get invited to speak about the case from time to  
21 time. And, uh, it's a place for people to be able to, uh,  
22 locate me, send me an e-mail, invite me to speak.

23 Q] And in that, you get to express your viewpoint with regard  
24 to Jessie Misskelley's either guilt or innocence; is that right?

25 A] I always have.

1 Q] So does that look like an accurate, that it does contain  
2 materials, and if so, I want to move for introduction of it.

3 THE COURT: Are you the systems administrator and  
4 do you prepare that website?

5 THE WITNESS: The content was provided...

6 THE COURT: ...do you compile it and put it  
7 together?

8 THE WITNESS: Uh, I guess the answer would be  
9 yes.

10 THE COURT: It's not "a guess." It's either  
11 "yes" or "no."

12 THE WITNESS: I don't know how to do this stuff  
13 on there, but I send it to a web person who does.

14 THE COURT: Okay. You supply the information?

15 THE WITNESS: Yes, sir.

16 THE COURT: All right, go ahead.

17 CROSS-EXAMINATION, continuing:

18 Q] But does it appear to be the information that you supplied  
19 to the web master?

20 A] Well, some of it isn't. Some of it is from the WM3.org  
21 site.

22 Q] Do you link to that?

23 A] Well, let's see. I think there is a link; yes, but it's  
24 not my content.

25 Q] Does it contain an http address at the bottom of each of



1 the pages?

2 A] Now the ones that are on my website that I refer to as my  
3 speaking website, uh, but most of this is stuff that's on the  
4 WM3.org site that I've never been affiliated with.

5 Q] Would you please, from the beginning would you mark what is  
6 on your website?

7 A] How would you like me to do this?

8 Q] Initial it.

9 THE COURT: Do you bill yourself out to be some  
10 kind of an expert when you go make these talks?

11 THE WITNESS: Absolutely not. In fact, it says  
12 specifically that I do not hold myself out to be an  
13 expert on anything.

14 THE COURT: I just wonder what the big demand  
15 would be, then.

16 THE WITNESS: I don't know. I don't solicit  
17 them; they call me and I go when they call.

18 THE COURT: Okay.

19 THE WITNESS: It's been fairly steady since the  
20 second HBO documentary.

21 CROSS-EXAMINATION, continuing:

22 A] Now some of these are articles that, uh, that are on my  
23 website.

24 Q] That's what I mean.

25 A] And this one is an article written by Fiona Steele who is a

1 reporter in Australia.

2 Q] Uh-huh?

3 A] Uh, that's not - - there's a link to her website.

4 Q] I see?

5 A] On my website, but it's not content that I have on my web-  
6 site. It's mainly a link.

7 Q] But it is content that is linked and connected to your web-  
8 site?

9 A] Yes.

10 Q] Do you see anything - - let's put it this way: Do you see  
11 anything in here that is not, that you just don't link to or is  
12 contained on your website?

13 A] (Witness examining same.)

14 Q] I'm assuming that you link to the WM3 the Dr. Richard Ofshe  
15 portion of that website?

16 A] Actually, I think on the front page of my speaking page,  
17 there at the end, it says "for more information about the case,"  
18 uh, it makes reference to a book that's been written about the  
19 case and also the WM3.org website, but I'm not responsible for  
20 any of the content on that website, other than a case synopsis  
21 that I prepared, uh, shortly after the case was concluded in '94  
22 and then I updated it in 1999. That's the only content that I  
23 contributed to the website, the WM3.org website.

24 Q] Well, that may have been the only thing that you con-  
25 tributed, but your website can point it back to other sections

1 of that website, doesn't it?

2 A] I think it just goes to the main page.

3 Q] Well, when you want to see the article section of this  
4 website, does that link you to other websites; go to that front  
5 page?

6 A] Actually, I don't see that portion of my website. This is  
7 not it; this is just my biographical information.

8 Q] Well, it wouldn't necessarily, I mean, this isn't a  
9 catalogue, this isn't a depiction of your website; this is a  
10 depiction of everything that goes through the links, everything  
11 on your website, in other words, where those links take you from  
12 your website. Would you agree to that?

13 A] I haven't gotten through all of this, yet. Some of this  
14 stuff comes from www.truetv.com, uh, again, this is not my  
15 content but there is a link in the article section of my  
16 webpage.

17 Q] I assume you've either read the truetv article, or are you  
18 responsible for what deciding what you link to, are you not?

19 A] Uh, yeah, certainly. A lot of this seems to be repeats of  
20 the same thing over and over again. This is an article that I  
21 wrote for the, uh, Arkansas Bar Magazine publication, about the  
22 Greene County court.

23 Q] That's on your website?

24 A] Right. And here's an article that I did for a CLE program  
25 that I conducted, uh, that, uh, has no direct relationship to

1 the case.

2 Q] Well, I'm just trying to get you to agree that this is the  
3 content of your website and anything that you put a link to?

4 A] This page here is not paginated, but this is the synopsis  
5 that I provided to the WM3.org site that I was speaking to - -  
6 it looks like I did that in '94 or '95 and then I updated it in  
7 '99 after consulting with some experts, forensic experts.

8 (Pause.) This, I'm not responsible for.

9 Q] Is it a link?

10 A] It's a link to that website, but I didn't provide any of  
11 the content. (Pause.) None of this is. And also, I have a  
12 disclaimer on my website that I'm not responsible for any links  
13 that are on the website; uh, I don't pretend to, to be, uh, it's  
14 not my website. I do have a link going to that website, but I  
15 expressly state that I am not responsible for the content of it.

16 Q] Well, not responsible, in the legal sense, I suppose?

17 A] (Unresponsive.)

18 Q] But you did make a conscious decision to put that link on  
19 your website; is that right?

20 A] For purposes of my speaking; yes. (Pause.) And a lot of  
21 this stuff from the WM3.org site is where they've put pleadings  
22 and transcripts up on the site. I don't go look at it very  
23 often.

24 Q] You're just linked to it?

25 A] There's a link on my website to it; yes. The only thing in

1 here that is my content, uh, states my name, uh, at the top of  
2 the page and at the bottom of the page. It gives the web  
3 address. And here's the part that I was looking for that wasn't  
4 at the beginning, which is, this is what people see when they go  
5 to the speaking website. It's the last two pages of this  
6 exhibit and it clearly states that, uh, "Mr. Stidham does not  
7 hold himself out to be an expert in any of these particular  
8 fields." And, uh, "there's no cost to this program," uh, "no  
9 fee for presenting a program." All I ask is reimbursement for  
10 travel expenses. And as I testified earlier, there was one  
11 time, uh, that the University in Florida insisted that I accept  
12 a honorarium; I think it was three hundred dollars and, uh, they  
13 insisted, and I used it to defray some of the travel expenses  
14 that they didn't cover: airline, food, and things of that  
15 nature.

16 Q] Okay. So have you marked that?

17 A] Yes.

18 MR. HOLT: We'd move for its introduction.

19 THE COURT: Okay, it may be received.

20 MR. ROSENZWEIG: Your Honor?

21 THE COURT: Yes, sir?

22 MR. ROSENZWEIG: I'm not sure what purpose this  
23 is. Obviously, there are certain things that might  
24 be, like essays or articles that Mr. Stidham has  
25 written about what his views were at a given time.

1 But the newspaper articles that were written by  
2 someone else, I can't imagine what relevance it has.  
3 It's, I mean, just because one links to it doesn't  
4 mean one endorses it in any way.

5 That would be like just because someone had a  
6 book in his library or read a certain article, he  
7 would be responsible for it. My position is that  
8 unless there is something I am missing about this, I  
9 would submit that the Court should consider - - I  
10 don't think we have to tear it apart or anything - - I  
11 think the Court should limit its consideration those  
12 matters that were actually written by Mr. Stidham.

13 MR. HOLT: Well, if Mr. Stidham has a website and  
14 Mr. Stidham makes the effort to link certain other  
15 sites, it's much like the analogy...

16 THE COURT: ...I think it goes to his state of  
17 mind subsequent to the trial, I suppose. And perhaps  
18 it has relevance as to what his particular view, mind-  
19 set is and I think that's pertinent.

20 MR. ROSENZWEIG: Note our objections.

21 THE COURT: Okay. I don't intend to pay a whole  
22 lot of attention to articles written by third-parties,  
23 but the website is a whole, as presented in this  
24 proposed exhibit is relevant.

25 MR. ROSENZWEIG: Your Honor, if I could expound

1 on this just a little bit more. You may go to a  
2 liberal website, political website that may have links  
3 to a conservative website.

4 That doesn't mean that their liberal website is  
5 agreeing with it; it's just that it shows - - and so I  
6 don't see where linking...

7 THE COURT: ...I understand what you're saying.  
8 What I'm saying the relevancy here is, it shows Mr.  
9 Stidham's efforts, uh, his desire, uh, his willingness  
10 to create a website to influence public opinion and to  
11 attempt to garner support for his client.

12 And what, really, what this hearing is all about  
13 is whether or not he did the best he possibly could as  
14 an attorney. I think it certainly goes to demonstrate  
15 that his efforts were way beyond what a competent  
16 attorney would do.

17 And, I mean, I think it's indicative of his  
18 ability or his effort to persuade that his client, to  
19 use his term, was "wrongfully convicted."

20 I think it's certainly relevant and I'm going to  
21 allow it, but again, as far as the hearsay and the  
22 articles by third people, I mean, the only relevance  
23 it would have would be that he saw some merit in  
24 including it in his website, for whatever that's  
25 worth.

1           THE WITNESS: If I may, I'd like to add that I  
2 didn't have a website until after the trials were  
3 over, uh, and I started getting all of the invitations  
4 and, uh, when I became a full-time judge last year,  
5 uh, I pulled down, uh, the law firm aspect of the  
6 website, for whatever that's worth.

7           The only updates have been, uh, on the  
8 professional profile page, uh, uh, talking about my  
9 becoming part of the pilot project and, uh, Judge  
10 Davis had sent me an e-mail the other day complaining  
11 about, uh, a link on my out-going e-mails to my  
12 speaking website and, uh, out of difference to him, I  
13 removed it and, uh, he also pointed out to me that,  
14 uh, to me that, uh, that I was no longer married,  
15 which my website says I am, so I needed to update it.

16           THE COURT: Well, I didn't know that. Well, I  
17 guess some people could consider it in your present  
18 position, to be a conflict of interest.

19           MR. HOLT: Let me move on.

20 (WHEREUPON, State's Exhibit #13 was admitted and received into  
21 evidence and is appended on page.)

22 CROSS-EXAMINATION, continuing:

23 Q] And rest assured, this will speed up. I need you to get  
24 the transcript out again and let's try for - - this is the  
25 transcript as the 8/19/93 audio tape was played, according to



1 the billing record.

2 A] I don't know that I have a transcript - - oh, that would be  
3 contained in the transcript itself?

4 Q] Yes. I think that was our problem the last time.

5 A] Okay. What date are we talking about?

6 Q] That would be the 11/20 hearing.

7 MR. ROSENZWEIG: And what are we looking for,  
8 what page?

9 MR. HOLT: Well, approximately - - without  
10 playing the tape again, approximately page 256.

11 THE WITNESS: Is this the one that's going to be  
12 paginated differently?

13 MR. HOLT: I think we're on the same page.

14 MR. ROSENZWEIG: Well, your copy is paginated  
15 differently from my copy.

16 THE WITNESS: Mine is, too.

17 MR. HOLT: What do you have - - I've got the  
18 audio tape.

19 THE WITNESS: Mine says, uh, it looks like a tape  
20 of me and Mr. Misskelley.

21 MR. HOLT: Yes.

22 MR. ROSENZWEIG: Does your begin with "where-  
23 abouts"?

24 MR. HOLT: "Whereabouts."

25 CROSS-EXAMINATION, continuing:

1 Q] Now if you could, the purpose of this tape was essentially  
2 to inform Mr. Misskelley in terms of plea negotiation  
3 possibilities; right?

4 A] 8/19?

5 Q] Right?

6 A] Yes.

7 Q] Okay. And it says "Stidham," on line 16, you're  
8 essentially saying, it says:

9 "STIDHAM: Well, let me tell you, I've seen the photographs of  
10 the bodies, and the injuries, and especially to the one to the  
11 Byers boy, he got his thing cut off, especially, especially  
12 gruesome. And when a . . . when a jury sees that they're going  
13 to be very, very angry and upset, uh, you know, as I told you  
14 before, they've got you charged with capital murder, and when a  
15 person is charged with capital murder, the only two punishments  
16 supported by law are death by elec - or actually it's death by  
17 lethal injection, they don't have the electric chair anymore,  
18 or, life in prison without the possibility of ever getting out  
19 on parole. No parole. Those are the only two things that could  
20 happen if the jury finds you guilty of capital murder. The  
21 prosecutor called me the other day and said that if you would be  
22 willing to testify against..."

23 And I think that's where there was a click and you thought that  
24 the tape was off, but you say:

25 STIDHAM: "Okay. I'm going to leave it on. Uh, you realize

1 that I'm taping this conversation? Okay? Uh, he called and  
2 said that if you'd be willing to testify and help with the case  
3 that he would, uh, recommend that you get life in prison with  
4 the possibility of getting paroled."

5 And you essentially take the rest of that page. And what are  
6 you trying to do at that point with Jessie?

7 A] Spell out what his options were with regard to plea offers  
8 I'm obligated to do, under the rules of professional conduct.

9 Q] And you did that to the best of your ability at that time,  
10 didn't you?

11 A] I think so; yes, sir.

12 Q] And on page 258 and of course, like I said, this is in the  
13 record both as an audio and as this. You say, essentially:  
14 "If the jury gets mad at those pictures they could give you life  
15 without parole or even the death sentence. Do you understand  
16 the difference?"

17 And he says: "Yeah."

18 And do you think that he did in fact understand the difference?

19 A] I know that he didn't, now.

20 Q] Oh, you know that he didn't now?

21 A] Yes, sir.

22 Q] Okay. But at the time?

23 A] At the time I thought that he did.

24 Q] You thought that he did, that he knew the difference  
25 between life, the death sentence and life without parole and

1 life?

2 A] At that time I still hadn't recognized the extent of his  
3 handicap.

4 Q] You hadn't "cracked the nut," so to speak, I guess?

5 A] I don't know if I would characterize it that way.

6 Q] Okay. Now it says here:

7 "I told the prosecutor that, uh, I would prefer that you plead  
8 guilty and get a certain number of years, that way you know  
9 exactly someday when you're going to get out. You can calculate  
10 it and say, I've got to do this much time and this is my release  
11 date."

12 And that's absolutely correct, isn't it, I mean, you can  
13 calculate the term of years - - this was before the 70% rule,  
14 you could calculate how you had to do - - flatten; is that  
15 right?

16 A] With a reasonable degree of certainty; yes, sir.

17 Q] Okay. Because what you go in on, you know, that's what  
18 applies, to flatten. And then there was also the possibility of  
19 good time as well; is that correct?

20 A] And there is also the possibility of bad time, uh, when  
21 there is trouble while he's down there.

22 Q] There is, but you can flatten; there's a certain date that  
23 you can say 'now if you behave yourself, this is the time will  
24 be that you will flatten'?

25 A] And that's why I explained to him that I would prefer that

1 it be a certain number of years as opposed to life.

2 Q] Right. "But that's your decision" - - line 16 - - "but  
3 that's your decision and not mine, and I can't make it for you.  
4 All I'll do is lay out the options for you."  
5 You're essentially there; you're doing what an attorney is  
6 supposed to do; is that right?

7 A] Yes, sir.

8 Q] Did you ever make a recommendation to him that he take one  
9 or the other; that he go to trial, or that he - - did you say,  
10 'Listen, you've got to take this plea'?

11 A] I don't think I've ever done that to a client. I tell them  
12 what I think.

13 Q] You've never made a recommendation?

14 A] I've made recommendations in the sense that I, 'here's what  
15 I think the strength of the State's case is against you, and  
16 here are the odds if we go to trial' but I would never, uh, and  
17 never have, to my recollection ever told a client you must take  
18 this offer, or I think you should. Uh, my job is to lay out the  
19 options, explain the options try to make sure they understand  
20 their options and let them make an informed decision.

21 Q] Did you think this was a case you could win?

22 A] Not on this date.

23 Q] Did you think this was a case you could win leading up to  
24 trial?

25 A] Yes.

1 Q] Is this a case you thought you could win on appeal?

2 A] Absolutely.

3 Q] Right there at line 16 it says: "But that's your decision  
4 and not mine, uh, all I'll do is lay out the options for you."  
5 And Jessie answers: "I, I don't want to do too much time, you  
6 know, I don't want to be lying to an attorney."

7 What do you think he meant by that?

8 A] I think it's - - he knew he was going to have to get up  
9 there and testify and he was afraid of getting up there and  
10 lying.

11 Q] Was he going to be lying to you?

12 A] At that point I didn't understand the significance of that  
13 line, uh, it didn't occur to me that he didn't understand.

14 Q] But that's before you, according to you, that you realized  
15 he thought you were a policeman?

16 A] I think it was before; yes, sir.

17 Q] Okay, let's go back to the billing records, page 3, and  
18 essentially, Mr. Stidham, I just want to recount some of this  
19 just to show that on a very regular basis I believe that you  
20 testified in the earlier hearing that you essentially, this was  
21 your case and that Greg second chaired it, Greg Crow second  
22 chaired it, but Greg Crow was sort of responsible for keeping  
23 the doors of the office open and did some other cases?

24 A] I think that's a fair statement; yes, sir.

25 Q] Okay. So let's just start with June 12<sup>th</sup>, 1993: "Conference

1 with attorney Crow regarding statement; review statement,  
2 approximately one hour." June 14<sup>th</sup>: "Phone conference with  
3 attorney Price." Do you have any recollection of what you were  
4 talking with attorney Price about, about this time?

5 A] That early on, I think all of the defense teams were con-  
6 cerned that we weren't getting any Discovery yet.

7 Q] Okay?

8 A] I think that would be my guess.

9 Q] Well, it was the next thing down. It says: "Draft motion  
10 for Discovery." So they kind of feed into each other, it seems?

11 A] Yeah, they do.

12 Q] Okay. Did you consult in any way with the Death Penalty  
13 Resource Center?

14 A] Uh, as I testified last time, I did. I, I called Ms.  
15 Sallings and asked for help.

16 Q] Did you get help in any way, like "canned motions," as we  
17 call them?

18 A] She told me that she had a position, an office and a desk  
19 and a salary, and she couldn't offer us any assistance whatso-  
20 ever.

21 Q] Okay. So you essentially drafted all of the motions your-  
22 self, or you have testified at earlier times that you did what  
23 lawyers do, and that you used "other good lawyers" motions, like  
24 Bobby McDaniel, didn't you?

25 A] Uh, I used, uh, a lot of motions that I, uh, uh, had seen

1 other lawyers use; yes, and, uh, Mr. Crow and I drafted others  
2 and, uh, we did extensive research and tried to flush out all of  
3 the issues that we could possibly find.

4 Q] June 15<sup>th</sup>: "Meeting with prosecutors and Price, Davison,  
5 Förd and Wädley, 8.75 hours." Do you have any recollection of  
6 this meeting?

7 A] That would be the day that we met, uh, in Marion with Judge  
8 Parker. I think Judge Parker had a criminal term going on at  
9 time and the lawyers had all agreed, the prosecutors and defense  
10 lawyers agreed that, uh, we would ask, uh, Judge Parker if he  
11 would take the case from its inception and on through the trial.  
12 And, uh, we felt like it would be best to have one judge to hear  
13 all of the motions.

14 Q] I see?

15 A] And so we met with, uh, Mr. Davis and Mr. Fogleman and, uh,  
16 spent, as you can tell, most of the day there discussing those  
17 issues.

18 Q] Okay. Also occurring on that same particular day, another  
19 phone conference with attorney Price. I assume it was after the  
20 meeting?

21 A] Uh-huh.

22 Q] "Phone conference with client's father." Those occurred at  
23 pretty regular intervals, didn't they?

24 A] Yes, they did.

25 Q] June 16<sup>th</sup>: "Phone conference with client," fifteen minutes?



1 A] Yes, sir.

2 Q] What were the nature of most of those calls?

3 A] Uh, just checking in with him, making sure that, uh, every-  
4 thing was okay. And asking questions, uh, and again, it's been  
5 almost sixteen years ago but, uh, I'm sure that I would have had  
6 questions about witnesses or things that might have happened or  
7 didn't happen.

8 Q] Would he answer those, or was he uncommunicative?

9 A] Well, he was never uncommunicative in the sense that he  
10 couldn't carry on a conversation, but again, you had to give him  
11 the answers or give him multiple choices to answer the questions  
12 because he could barely - - at times, he could put together a  
13 string of two or three sentences of a narrative, but other than  
14 that, it was just almost - - and of course, I wasn't familiar  
15 with how to deal with clients with handicaps. And it wasn't  
16 until I saw Dr. Richard Ofshe conduct his interview with Mr.  
17 Misskelley that I began to understand that there was a better  
18 way to try to communicate with him.

19 Q] Did you use that better way to communicate with Mr. Miss-  
20 kelley on February 8<sup>th</sup>?

21 A] Yes.

22 Q] Did you? You're certain of that. You're certain that his  
23 answers weren't narratives? Did you expect him on February 8<sup>th</sup>  
24 to just sit down and say, start with the first thing and just go  
25 through it completely, sentence by sentence?

1 A] That's what I would have preferred, but obviously, he  
2 couldn't do that.

3 Q] Did you ask him to do that?

4 A] I think I asked him several times, uh, and I don't know - -  
5 there's been so many of those statements, I'd have to look at my  
6 notes, but there was one time I begged him to give me something  
7 that I could use to corroborate what he was saying. And it  
8 became obvious to me that he was - - we sat through two weeks of  
9 trial and had seen the exhibits and heard the testimony and it  
10 was apparent that he was trying to change his story to comply  
11 with what he heard from the witness chair in Corning.

12 Q] So this was a person who couldn't, who couldn't give you an  
13 answer but could recall in detail everything that had occurred  
14 at the trial?

15 A] No, sir, not everything in detail. It was, again, it  
16 was...

17 Q] ...but this was - - I'm sorry.

18 A] He just couldn't tell the story. He's never been able to  
19 tell a story. Now if you ask him to tell you a story about, uh,  
20 wrestling or how to take apart a '69 Nova, uh, and put it back  
21 together, he can, he can pretty much give you a narrative about  
22 that. But when you try to get him to give you information about  
23 what happened, uh, in these alleged murders and whether he was  
24 there or not, I mean, he just couldn't do it.

25 Q] So you're contending that the February 8<sup>th</sup> statement that he

1 gave is not in great detail, and it's not from him?

2 A] Well, the answers are from him, obviously. I mean, the  
3 tape speaks for itself. But again, as I recall from my  
4 listening to the tape and reviewing, uh, it, uh, uh, he got  
5 things wrong again. I mean, it was just things that were  
6 impossible, uh, he changed his story - - I could give you  
7 examples if you would like, but you've asked me several times  
8 and every time I try to give you examples, you stop me. But,  
9 uh, I mean, every time he gave a statement, whether it was "I  
10 want to testify," or "I don't want to testify," there were  
11 dramatic differences. The theme was always the same but there  
12 were dramatic differences in some really, really basic facts  
13 that, uh, alarmed me. And this exhibit is what convinced me,  
14 uh, that, that not only was he not there when the children were  
15 murdered, but he had never been to this particular location at  
16 all.

17 Q] Wow. Okay. So it's your contention that you asked him for  
18 a narrative in the February 8<sup>th</sup> statement?

19 A] I tried.

20 Q] You tried. Let's go back to page 4, June 17<sup>th</sup>: "Conference  
21 with client"?

22 A] Yes, sir.

23 Q] Would you have had notes from the June 11<sup>th</sup>, '93 conference?

24 A] If I did, they would be in that file.

25 Q] I'm asking you did you have notes, those notes from that

1 June 11<sup>th</sup>, '93...

2 A] ...there's no way that I...

3 Q] ...would you have taken them with you?

4 A] It would be pure speculation on my part. I couldn't tell  
5 you.

6 Q] Well, was it your practice or your habit to do that?

7 A] I wouldn't carry my entire file; no. I would probably take  
8 a legal pad, uh, and maybe a copy of the original statement to  
9 the police, because again, that was what I was trying to get him  
10 back to instead of all of the deviations that he kept repeating  
11 to me over and over again.

12 Q] Well, let me ask you this: Were you trying to get him to  
13 say everything, some things that were obviously incorrect, to  
14 say things in the very first statement, or were you getting him  
15 to try and tell the truth about what he saw when he was there?

16 A] I thought the truth was that he was there and witnessed the  
17 murders.

18 Q] Okay?

19 A] I was laboring under that assumption.

20 Q] Okay, within that perimeter, "I thought he was there and  
21 witnessed the murders"; right?

22 A] Yes, sir.

23 Q] Now there are details about everyone's life that they can't  
24 remember, and when you say that he can't remember a particular  
25 detail because you happened to, you're making a subjective

1 judgment about what he could or couldn't get right, aren't you?

2 A] Well, I...

3 Q] ..."yes" or "no"?

4 A] In my opinion, yes. Everyone has their opinion. The ex-  
5 perts have their opinion in the case, I have my opinion. But,  
6 but the thing that concerned me at that very moment in June when  
7 I was trying to talk to Mr. Misskelley was how could anybody not  
8 know the difference between a big brown rope and a pair of shoe  
9 laces, and how could someone, uh, you know, sure, we forget  
10 things. I don't remember going to the prosecutor's office in  
11 August and meeting with John and Brent. I honestly cannot re-  
12 call that meeting. I know I was there because it's in my  
13 billing records and the tape says I relayed the offer to Mr.  
14 Misskelley. But I don't remember it, but I would like to.

15 Q] My point is that you might not have remembered everything  
16 that he told you each time, you might have thought something was  
17 different and it really wasn't.

18 A] But if I were standing somewhere and watching three eight-  
19 year-old children murdered, uh, I think that's a traumatic  
20 enough event that I would know the difference between nine  
21 o'clock in the morning and noon; whether the boys skipped school  
22 or whether they didn't.

23 Q] Well, we understand, of course, that those nine o'clock and  
24 noon and all of those times, there exists the possibility that  
25 that has to do with avoiding guilt or avoiding culpability, or

1 trying to evade responsibility for what happened?

2 A] Well, what would the time have to do with that?

3 Q] Well, if you can't get something right, maybe you weren't  
4 there if you can't get it right. Isn't that your whole point?

5 A] Well...

6 Q] ...it could be that he was evading, for instance, when he  
7 said Ricky Deese, that he was with Ricky Deese, and in fact the  
8 memo that he gave you, the part of your epiphany was that he was  
9 with Ricky Deese until 6:30 p.m. And as it turned out, when you  
10 asked, when you got to interviewing witnesses, alibi witnesses  
11 that Mr. Misskelley had provided and had already talked to, that  
12 Ricky Deese let him off at 1:00 or 1:30. And so Ricky Deese  
13 wasn't the alibi witness that he had established for up to 6:30,  
14 was he?

15 A] That's my recollection; yes, sir. But my point that I was  
16 trying to make, and I can only answer your question in two  
17 phases, because my state of mind in what I was trying to  
18 accomplish prior to September and after September were two  
19 different objectives. And Exhibit 12E is my trying to get him  
20 back on script so that he could testify, which I thought truth-  
21 fully. And that's when I started having problems with why can't  
22 he get these obvious and easy things correct. And it wasn't  
23 until, uh, the epiphany, as you refer to it, uh...

24 Q] ...well, I believe that was your word?

25 A] Well, it's been your word today.

1 Q] And it has. Granted.

2 A] And so be that as it may, whoever's word it is, that's  
3 exactly what it was. But suddenly everything changed and, and,  
4 you know, things started making sense. And then when I read Dr.  
5 Gudjonsson's book and visited with, uh, the experts in the case,  
6 suddenly all of this stuff started making sense where it didn't  
7 before.

8 Q] It started making sense to you?

9 A] Sure. Obviously.

10 Q] And when he gave this statement pursuant to a grant with  
11 immunity February 17<sup>th</sup>, 1994 in Joe Calvin's office?

12 A] That was a very traumatic event for me and I can remember  
13 every detail of that evening. That's something that's just an  
14 example.

15 Q] Well, let me back up just a minute. You know, some of the  
16 things that he gave you, I mean, at one point he even, and he  
17 maintained throughout statements where he said that he was there  
18 and witnessed it - - I'm not talking about statements where he  
19 said the cops lied this all out on him and all of that. I'm  
20 talking about when he was part of "I was there and I need to  
21 plead guilty and testify and get a deal," he was pretty  
22 consistent with the, or he always said even after post-trial,  
23 that he was drinking whiskey and that Jason and Damien were  
24 drinking beer; is that right?

25 A] No, that's not right.

1 Q] It's not?

2 A] He was not consistent in that. One time he said, uh, "my  
3 whiskey bottle still had some of it in it."

4 Q] Yes. And he said he, for some odd reason, he said he got  
5 sick later?

6 A] And then he said a different time that he didn't get sick.

7 Q] But you're saying here on the record that he did say - - do  
8 you have some record of that where he said he didn't get sick?

9 A] Yes, sir.

10 Q] Okay?

11 A] You haven't seen that?

12 Q] No.

13 A] Uh, I could point it out to you.

14 Q] Well, we'll keep the record open for you to do that.

15 A] Okay. One time he said he threw up, one time he said he  
16 didn't. And one time he said that Damien engaged in sodomy with  
17 one of the children and the next time he said he didn't.

18 Q] Well, let's talk about that, as far as the trauma. Did it  
19 strike you as kind of odd that if he's just going by a script  
20 and that post-trial he says in fact that yes, they did attempt  
21 to have anal sex with the boys, while the medical examiner - -  
22 when he could just as easily have said "no, I made that up," and  
23 it fits with the medical examiner who said there was no trauma.  
24 But you can attempt to have anal sex with a victim in a case, in  
25 any kind of a case, and there not be trauma necessarily; isn't



1 that true?

2 A] The medical examiner testified that it would be nearly  
3 impossible for that to occur. And Mr. Misskelley heard that  
4 from the witness stand. And on another occasion during this  
5 two-week back and forth period, he said Damien stuck his finger  
6 in one of the little boy's anus. So, uh, I mean, he was just  
7 all over the map with, with all of these details that should  
8 have been very, very clear and obvious to anyone who was there.

9 Q] So it was your opinion then, that if he said they attempted  
10 to have anal sex with the boys, and Peretti said there was no  
11 trauma, then he's lying, or he's making it up?

12 A] That's why I...

13 Q] ...is that what you're saying?

14 A] That's why I said on the record of the 2/17 statement, and  
15 Mr. Crow did the same thing, that we believe as officers of the  
16 court, that Mr. Misskelley was perjuring himself.

17 Q] Now you said you strongly believed that he was perjuring  
18 himself; both of you, you said you strongly believe he was  
19 perjuring himself?

20 A] Yes, sir.

21 Q] But you didn't know he was perjuring himself, did you?

22 A] (Unresponsive.)

23 Q] You didn't know he was perjuring himself, did you?

24 A] I believe that he was. Yes, sir.

25 Q] You believed he was, but you didn't know. What is the

1 obligation of an attorney? Is it to say "I believe he's  
2 perjuring himself," or is it "if he gets on the stand, he will  
3 commit perjury"?

4 A] I had an obligation to both my client and to the court,  
5 under the Model Rules of Professional Conduct. And also, in  
6 that very statement Mr. Davis says very clearly "none of this  
7 will ever, ever, ever, ever, ever be used against you, ever."  
8 And here we are today talking about it being used against him  
9 under a grant of use immunity.

10 Q] Well, I can see you've paid attention to every proceeding,  
11 arguments of the attorneys. If you would, page 4, June 22<sup>nd</sup>?

12 A] Of my billing records?

13 Q] Yes. June 22<sup>nd</sup>, '93: "Phone conference with Val Price;  
14 phone conference with client." What is there - - at this point,  
15 what is the interaction between you and Val Price. I mean, your  
16 guy is going to cop a plea; right?

17 A] June 23?

18 Q] June 22<sup>nd</sup>.

19 A] I'm sorry. June 22<sup>nd</sup>. I don't know, uh, I have no idea.  
20 It was a lengthy phone conversation.

21 Q] June 22<sup>nd</sup>, you did, I mean, you still recognized that you  
22 had different interests, that your client had way different  
23 interests than Val's client did; right?

24 A] Sure.

25 Q] Okay. Well, I just wanted to establish that. You also on

1 that same date made a call to Jessie, Sr.; is that correct?

2 A] Yes, I did.

3 Q] In fact, these were at very regular intervals, weren't  
4 they?

5 A] They appear to be; yes, sir.

6 Q] On June 23<sup>rd</sup>, '93, there is a conference with client's  
7 father with client, together. Do you have any recollection of  
8 that meeting for three and a half hours?

9 A] I can't say with one hundred percent accuracy, but I think  
10 that is the day when Mr. Crow and I were at the jail trying to  
11 prepare Mr. Misskelley to testify against his co-defendants and  
12 his father walked in the jail cell and he got up and ran across  
13 the room, uh, gave his father a hug and said, "I didn't do it,"  
14 uh, "you've gotta get me out of here. I was roofing that day,"  
15 uh, "I didn't do it."

16 Q] Okay?

17 A] I know that event happened; I just don't know what date it  
18 happened. Looking at the billing records, I'm assuming that  
19 would have been about the time that it, that it happened.

20 Q] "Research on..."

21 A] ...and it's also the only time that I can ever remember  
22 talking to Mr. Misskelley while his father was present pre-  
23 trial.

24 Q] Just that one time?

25 A] I think. That's the only one I recall.

1 Q] Okay. Then June 24<sup>th</sup>: "Research on P's motion for  
2 Discovery." Is that Price?

3 A] Uh, usually when I use the word "p" it refers to plaintiff.  
4 I don't know why, uh, I have no explanation for that.

5 Q] Okay. "Review autopsies; research; 25<sup>th</sup>." Next page, page  
6 five, "June 28<sup>th</sup> phone conference with client's parents."

7 A] Yes, sir.

8 Q] Anything?

9 A] I reported with them regularly to let them know what was  
10 going on.

11 Q] "Conference with client on 29<sup>th</sup> of June, along with  
12 research, reviewing information from client's parents." What  
13 might that have been?

14 A] I believe that's when they were prodding me to get out and  
15 interview the alibi witnesses. And I was trying to explain, you  
16 know, to them that, uh, Mr. Misskelley at that point was still  
17 telling me that he was there and present and wanted to testify.

18 Q] So they knew that unless and until Mr. Misskelley, Jr. said  
19 something to you otherwise, you were going to pursue a plea?

20 A] Well, you know, he was telling me one thing and telling  
21 them another, obviously.

22 Q] And they knew that you weren't interested in the alibi  
23 witnesses as long as Jessie was telling you that he was there  
24 and had done it and had seen it?

25 A] And I assumed, as we talked about it earlier, that he just

1 didn't want to admit this to his father.

2 Q] Okay. Several different things during the course of this,  
3 uh, "July 2<sup>nd</sup>, meeting with attorney Fogleman, view crime scene  
4 from highway, review Discovery with prosecutor." Was that with  
5 John Fogleman - - you didn't get in there because of the poison  
6 ivy?

7 A] Yeah, I could look at poison ivy and get it. I never  
8 actually went into the crime scene until, uh, until after all of  
9 the foliage, uh, had all went away in the fall. But I don't  
10 remember meeting with John or why I did, but obviously, I did.

11 Q] Okay. Further down are other entries. There's one in July  
12 there's one: "review letters from client." Was there any reason  
13 that some letters your client wrote to different people were not  
14 sent?

15 A] Letters that Mr. Misskelley wrote?

16 Q] Yes?

17 A] If he wrote letters to people, then I would have had no way  
18 of knowing it.

19 Q] Okay. Now wasn't there a procedure where letters went  
20 through to you?

21 A] I asked him to do that, yes. But he obviously was free  
22 to do that.

23 Q] Well, you say he was free to do that, but if he gave a  
24 letter to you and it was still in your files, then you obviously  
25 didn't forward it to whoever he had sent it to?

1 A] If it's in there and it wasn't postmarked or sent, then  
2 yeah, the answer is yes.

3 Q] Do you know why those kinds of letters would sometimes bear  
4 sticky notes that said "do not send"?

5 A] Uh, because I didn't want him to establish a rapport with  
6 someone on the outside and have something come back later to  
7 haunt us.

8 Q] Even if it was someone like Susie Brewer?

9 A] Sure. There was actually a time when a newspaper - - or  
10 excuse me - - a TV reporter tricked, uh, uh, I think it was  
11 portrayed in the HBO documentary where Mr. Misskelley, Sr.  
12 called and talked to his son and handed the phone to his girl-  
13 friend. And they began talking and I was very cognizant of try-  
14 ing to keep the media away from him and I was basically trying  
15 to keep everybody away from him but his immediate family.

16 Q] Do you recall also requesting Jessie doing that, following  
17 through with your request that he write a letter to his father  
18 and tell his father that he didn't need him going on TV and that  
19 it was not in his best interest and it was not helping you as an  
20 attorney?

21 A] I don't specifically recall that, but I can't say that it  
22 didn't happen. If it's in my file, I did it.

23 Q] Okay. We can find it and we'd like to leave the record  
24 open for that. There's a phone conference with client's  
25 parents, research the motion to suppress on July 8<sup>th</sup>. Page 7 I

1 notice all during the course of this, you said you're drafting  
2 pre-trial motions. "July 23<sup>rd</sup>, '93, phone conference with John  
3 Fogleman; letters to client." What does that mean?

4 A] It's possible that by then that Mr. Fogleman and I were  
5 talking about the basic perimeters of a plea offer. I don't  
6 know. It might have been something to do with discovery, uh, I,  
7 I honestly can't say without digging through my file.

8 Q] Okay. Could it have been sending him letters, perhaps?

9 A] Sending letters?

10 Q] Sending him letters that had been sent to your office?

11 A] Sending Mr. Fogleman letters?

12 Q] No, no, no. It says "sending letters to client." Sending  
13 letters from people who sent letters to Jessie in care of  
14 Stidham Law Firm?

15 A] Oh, that would have probably been people, uh, sometimes I  
16 think we would send the letters, but not anything with a return  
17 address on it, so that he couldn't write back. He got letters  
18 from people all over the world, uh, boxes and boxes of letters,  
19 uh, and some of them they would send to the office.

20 Q] Okay. But I guess you were mainly concerned with the  
21 family, friends, that kind of thing?

22 A] Yes, sir.

23 Q] I'm just kind of looking through here. I don't have much  
24 marked, but there is activity on July 22<sup>nd</sup>, 23<sup>rd</sup>, 25<sup>th</sup>, 27<sup>th</sup>, 31<sup>st</sup>,  
25 August 1<sup>st</sup>, August 2<sup>nd</sup>, another phone conference with attorney

1 Davidson, conference with attorney Crow, review discovery  
2 documents; I see discovery was coming in, and you were reviewing  
3 that?

4 A] By that time it was coming in; yes, sir.

5 Q] Okay. "Research discovery, Rule 18.1, review discovery and  
6 motions." On page 8 you have a court appearance in Marion. Was  
7 that "conference with client," "conference with client's  
8 parents," and "conference with attorney Fogleman." Was this  
9 just Misskelley at the Marion hearing, or was it all of the  
10 defendants?

11 A] I honestly can't recall. I'm sorry.

12 Q] Okay?

13 A] Uh, I know there was, uh, most of the hearings that we had  
14 prior to October were multi-defendant hearings, uh, and it might  
15 have been hearings with regard to motions for - - I think Mr.  
16 Ford had filed a motion for, uh, expenses, or maybe to get paid,  
17 uh, as the case went on as opposed at the end, uh, things of  
18 that nature.

19 Q] I see here research on change of venue, and I believe that  
20 motion was granted; right?

21 A] Yes, sir, it was.

22 Q] Okay. "August 6, conference with client regarding plea  
23 negotiations," an hour and forty-five minutes. Do you know if  
24 you made any notes or a recording regarding that conversation?

25 A] If I did, it would be in my file, sir.



1 Q] And again, if it's not; you didn't?

2 A] That's right.

3 Q] And, you know, a lot of times these legal pads go to a  
4 meeting and they are clean, and they leave them just as clean.  
5 Is that the case?

6 A] Sometimes you take notes and sometimes, you know, you don't  
7 and, uh, if I had a habit of recording offers directly from a  
8 prosecutor to a client, it was a specific offer. That's why  
9 that - - was it August 19<sup>th</sup>?

10 Q] 19<sup>th</sup>.

11 A] Uh, was recorded. That was just a habit of mine, uh, in  
12 every criminal case that I handled, uh, but if I didn't, uh, if  
13 there's not a tape of 8/6, uh, and, and that may be that  
14 obviously predated the actual offer, so that may have been the  
15 conference I had with him, uh, in anticipation of meeting the  
16 prosecutor.

17 Q] I see. But you were keeping Misskelley abreast of what was  
18 going on?

19 A] Yes, sir.

20 Q] "August 10<sup>th</sup>, phone conference with attorney Davis regarding  
21 plea; conference with attorney Crow regarding plea" on that day.  
22 That wouldn't have been a three-way call, would it?

23 A] No, it looks like I talked to Mr. Davis and then spoke to  
24 Mr. Crow afterwards.

25 Q] Okay. And then another "phone call from prosecutor; Jones-

1 boro Sun and conference with Dan." Okay. And that's Crow?

2 A] Apparently; yes, sir.

3 Q] Okay. 8/12, you're doing something, uh, "reviewing dis-  
4 covery"; "8/16, reviewing a letter." You have another phone  
5 call from Val Price. "8/17," it appears that it is - - is that  
6 the date with all attorneys?

7 A] I'm sorry. Could you repeat that?

8 Q] Page 9: "8/17/93," you said you "met with Gitchell, Ridge,  
9 regarding documentary and physical evidence." Was that separate  
10 than any kind of conference that you had listed with Price and  
11 Davidson?

12 A] There, I think there was - - again, it's a long time ago -  
13 - but I think there was a meeting that was set up for all of us  
14 attorneys to go and look at the physical evidence in the case,  
15 uh, I think they had it spread out on the conference table at  
16 the police department and we were all permitted to go look at it  
17 at the same time.

18 Q] The same time?

19 A] Yeah, I think that's what that was.

20 Q] Did you ever deal with Gitchell and Ridge separate and  
21 apart from the other defense counsel?

22 A] A couple of times I would call and visit with them, uh, I  
23 would call sometimes and ask questions, uh, the thing I remember  
24 the most is calling Inspector Gitchell and asking for a copy of  
25 the criminal profile from Quantico and he said it didn't - -

1 there wasn't one, uh, even though there was a newspaper article  
2 in *The West Memphis Evening Times*, where he referred to it.

3 Q] Okay. August 19, '93, that's the taped conference with  
4 your client that we talked so much about. Shortly after that  
5 there's research. "August 22<sup>nd</sup> on confessions, and again, on the  
6 23<sup>rd</sup> of August, phone conference with Jessie, Sr.; reviewed  
7 letters from client." Does that mean personal letters that he  
8 had written - - jail mail?

9 A] I don't know for sure, sir. I'm sorry.

10 Q] Okay. Well, shortly after that it says you had a "phone  
11 conference with Susie Brewer"?

12 A] It's very possible that he sent me a letter and then I  
13 either read it to Ms. Brewer or forwarded it on to her. That  
14 would be my guess, but it's just that - - a guess.

15 Q] Okay. There's more activity: "8/24," and "8/27, travel to  
16 and from Jonesboro." Would that 8/27 have been the meeting with  
17 Mr. Davis?

18 A] It very well could have been, although if it was, it wasn't  
19 a very long meeting.

20 Q] Okay. Well, flip the page there. You have 8/27 and then  
21 we have...

22 A] ...okay, there's more. I see.

23 Q] "Meeting with prosecutor"?

24 A] Yes, that was the day and that's the day I honestly can't  
25 remember, but it obviously happened.

1 Q] And if there's a memo in there from a secretary to you,  
2 saying that you have a meeting on that particular date?

3 A] No reason to dispute that, sir. It obviously happened, I  
4 just don't recall it.

5 THE COURT: Let's take a ten-minute recess.

6 Court will be in recess ten minutes.

7 (WHEREUPON, a recess was taken; proceedings resumed as follows,  
8 to-wit:)

9 CROSS-EXAMINATION, continuing:

10 Q] Let's see where we were here: "August 28<sup>th</sup>, conference with  
11 attorneys Davis and Fogleman," and this is the actual plea, or  
12 an actual offer extended, isn't it?

13 A] I believe that's what the tape reflects.

14 MR. ROSENZWEIG: Where were we when we recessed?

15 MR. HOLT: Billing records, page 10, 8/28/93.

16 MR. ROSENZWEIG: Okay.

17 CROSS-EXAMINATION, continuing:

18 Q] "Conference with Crow," here we go, again. This is where  
19 we were. The next day, "August 30<sup>th</sup>, conference with Crow  
20 regarding plea bargain." Is it fair to assume that that is  
21 regarding the, what had occurred a couple of days prior to that?

22 A] Yes, sir.

23 Q] Okay. And then there's "research done on confessions," and  
24 there's a phone call from Fogleman and a memo to Dan from Greg,  
25 I assume, and that should be in the file?

1 A] It should be; yes, sir.

2 Q] Okay. "8/31/93, reviewed discovery materials from the  
3 prosecutor." "September 1<sup>st</sup>, phone conference with Mrs. Miss-  
4 kelley." Is this Jessie's mother?

5 A] His step-mother.

6 Q] Step-mother. Okay. And then a "phone conference with  
7 Jessie, Sr., and then a short phone conference with client on  
8 first of September." And "research regarding testifying against  
9 co-defendants." Do you know if this was just you, or was it  
10 Greg, or do you know?

11 A] Greg did most of the research but, uh, I can't tell from  
12 looking at the billing records.

13 Q] His typing is just as neat as yours is. "September 2<sup>nd</sup>,  
14 '93, meeting with client's family in Trumann." Who would that  
15 have been?

16 A] I believe that we met Mr. Misskelly - - I don't know if the  
17 step-mother was there or not, but Mr. Misskelley was becoming  
18 quite agitated about, uh, the fact that we hadn't talked to all  
19 of these witnesses that he had asked us to interview and I kept  
20 trying to explain to him that, you know, that I don't want to  
21 waste my time interviewing alibi witnesses when there is a DNA  
22 match. And, uh, that's pretty much what that was about.

23 Q] Okay. Well, this is almost a two and half hour meeting?

24 A] I believe we met at McDonald's in Trumann.

25 Q] Okay. They didn't throw you out, or anything?

1 A] McDonald's?

2 Q] Right?

3 A] Or the Misskelley's?

4 Q] No.. McDonald's?

5 A] No. I guess we drank enough coffee and probably ate.

6 Q] Well, what are you trying to explain to them, I mean, are  
7 you at this point...

8 A] ...trying to set the stage for them to make them understand  
9 the facts as I understood them at that particular time, was that  
10 we needed to move towards a plea offer.

11 Q] Okay. So you're advocating at that point?

12 A] Yes, sir.

13 Q] At least to them?

14 A] The DNA match I thought was definitive, uh, uh, obviously,  
15 I had filed a motion to have it reviewed by independent experts  
16 but, uh, again, the epiphany took place, uh, in late September  
17 when Prosecutor Fogleman told me that, that it wasn't a match.

18 Q] Well, and at that point, too, was there - - well, at that  
19 point and subsequent to September, there wasn't a lot of DNA  
20 available. We have to kind of look back at this in terms of  
21 1993, as well?

22 A] DNA was in its infancy at that time.

23 Q] Right. In fact, the reason that something - - for  
24 instance, something like the T-shirt at that time would be, it  
25 could be somebody else's DNA; it just has to be somebody in that

1 seven percent population that Misskelley had; right?

2 A] I haven't - - to be honest with you, and express still at  
3 this stage in my life, I have a very, uh, unsophisticated under-  
4 standing of exactly how DNA works and the different types of  
5 testing. I know obviously when I review a report what it says,  
6 but I don't understand the science of it.

7 Q] If the numbers are the same, it's a match, I mean, the  
8 matches back in '93 weren't the kind of matches, weren't the  
9 statistical type matches that they were subsequent to that?

10 A] No, and things didn't really start clicking with DNA until  
11 about probably around 2000, 2001, in that range.

12 Q] Okay. "September 5<sup>th</sup>, a letter from attorney Ford"; now he  
13 represented Jason Baldwin. What was his im - - how did he  
14 impact your case?

15 A] He would send us courtesy copies of any pleadings that he  
16 filed. I assume that was a copy of the pleadings that he had  
17 filed, based on the amount of time, uh, point two hours.

18 Q] Next page, page eleven, "September 8, '93, phone conference  
19 with attorney Davis." Any recollection of what that might have  
20 been about?

21 A] I'm assuming it was follow-up with the plea negotiations.

22 Q] You're still reviewing discovery; you're reporting in phone  
23 conference with Jessie, Sr. again, and this is following the  
24 long, long pow-wow. "9/12/93, reviewing discovery; 9/13/93,  
25 researching venue; 9/14, review letter for Jessie"; what does

1 that mean?

2 A] (Unresponsive.)

3 Q] Well, we can work that out. I mean, that might be the  
4 letter that you asked him to write, for example?

5 A] It could be, very well. I just don't know; I can't tell  
6 from looking at this.

7 Q] Okay. "September 15, '93, phone conference again with  
8 Jessie, Sr.," and you talked with him on a weekly basis at that  
9 point, it appears?

10 A] Yes, sir.

11 Q] Is this always you reaching out to him, or is this you  
12 taking a call, or what is this exactly?

13 A] It would be both ways.

14 Q] Both ways?

15 A] Uh-huh.

16 Q] There is research on September 15 over venue; there's  
17 affidavits that you're required, of course, uh, that were  
18 prepared on the 16<sup>th</sup>; a brief in support, 9/17; page 12 there was  
19 travel to Piggott, Blytheville and Marion for affidavits, I  
20 assume you were in different places in the district?

21 A] That's correct.

22 Q] "Conference with Sr.; more discovery materials on the 19<sup>th</sup>  
23 of September." On the 20<sup>th</sup> of September "research regarding  
24 experts and confessions." Now, what was this about?

25 A] Uh, obviously, I was moving in the direction of, uh, trying



1 to figure out a way to combat, uh, the confession, and thinking  
2 about potential experts to do that.

3 Q] In what way?

4 A] Uh...

5 Q] ...we haven't gotten to the, at this point, I mean, you  
6 hadn't gotten to the false confession, necessarily, had you?

7 A] No.

8 Q] You had gotten to the fact that...

9 A] ...Lax got me to Ofshe, and Ofshe got me to Gudjonsson's  
10 book, so this was about a week before.

11 Q] I see. And so this could have just been your basic generic  
12 challenge of the confession because Jessie wasn't very smart, or  
13 he was easily influenced and his will was overborne and, you  
14 know, just your standard attack on a confession and in terms of  
15 tactics and things like that. And I believe that there are  
16 memos in the - - or at least, in the notes?

17 A] It looks like we filed our motion to suppress shortly  
18 thereafter.

19 Q] Okay?

20 A] So it's probably in conjunction with that.

21 Q] And you understood, I think there is notation that will  
22 bear this out, at a later time we will go through that and find  
23 that and provide it for the record, but you understood that the  
24 police could in fact tell a suspect something that wasn't  
25 necessarily true, or that they could in fact, that as the U.S.

1 Supreme Court said, "custodial interrogation is some inherently  
2 coercive, or has aspects of it in and of itself"; right?

3 A] Especially regarding juveniles.

4 Q] Okay. And you recognized that at the time?

5 A] Sure.

6 Q] Okay. And so that would have been the basis of any attack  
7 that, you know, at this point, that would have been "the bullet  
8 in your gun," so to speak in terms of trying to shoot down the  
9 confession that Jessie had made?

10 A] Yes, sir.

11 Q] Okay. On 9/20/93 there is also a draft, a motion for  
12 extension of time for reviewing more discovery; researching a  
13 motion; researching suppression and that's the same, what we  
14 talked about. 9/21/93, letter to Val Price and Scott Davidson?

15 A] My guess would be I was sending them copies of my  
16 suppression - - or my change of venue motion.

17 Q] Okay. This wouldn't have been the time that there were  
18 letters that you wrote, or a letter that you wrote because some-  
19 one was holding himself out as representing you?

20 A] That's correct.

21 Q] As an investigative member - - the Inquisitor was doing?

22 A] As I testified to earlier, their witnesses were calling me  
23 and saying that my investigator had come by and talked to them.  
24 And I said "I don't have an investigator," and I asked who it  
25 was and of course, he did leave a card. So I may have contacted

1 them for that purpose, or to send them copies of some pleadings.

2 Q] And so you were essentially telling them to butt out?

3 A] Yes.

4 Q] "Phone conference with potential witness to review facts;  
5 review discovery," all on 9/21. Next page, 13, "9/22/93, phone  
6 conference with attorney Fogleman; phone conference with Judge  
7 Burnett." Any recollection if that would be about scheduling?

8 A] I assume. I, I just don't know without looking at the  
9 file.

10 Q] Okay. Here is our weekly call to Jessie, Sr., or answering  
11 a call from him, it appears?

12 A] Uh-huh.

13 Q] Okay. "Conference with client's father in Trumann," three  
14 hours and ten minutes. This is separate, you know, this is just  
15 a father in Trumann and it's longer than the other one?

16 A] This may have been the one, uh, it's more contemporaneous  
17 with, uh, with the suppression issue, and we would meet, because  
18 Trumann was about half-way...

19 Q] ...I see...

20 A] ...between West Memphis and Paragould.

21 Q] Okay. So also, you were also, I mean, this wasn't just  
22 about advocating a plea at this point; this was probably  
23 developing information with regard to the day that Jessie was  
24 picked up?

25 A] Probably; yes, sir.

1 Q] Okay. Because part of that was going to be the fact basis  
2 for the suppression issue; right?

3 A] Certainly.

4 Q] Was Jessie, Sr. called as a witness in that?

5 A] He was.

6 Q] Next, you're researching use immunity, I guess, versus  
7 transactual immunity, or exactly what you could get from that.  
8 Was that a Greg-thing?

9 A] I honestly don't know. I don't recall those two words  
10 being used until February of '94. I honestly don't know. I  
11 hope maybe there's some explanation in the file for that,  
12 because that's puzzling to me.

13 Q] Okay. But they could, you know, if you were granted, I  
14 mean, somebody might give use immunity; is that what it meant?

15 A] It may have been that, uh, I had discovered that the  
16 prosecutor was going to offer somebody immunity in exchange for  
17 their testimony. I just don't recall.

18 Q] Okay. Next, "phone conference with Death Penalty Resource  
19 Center, fifteen minutes" with them and you had said essentially  
20 they did not offer you any assistance?

21 A] They said they couldn't.

22 Q] Couldn't? Did they give a reason?

23 A] Yeah, and the reason was, uh, the Legislature had created  
24 Death Penalty Resource Center in that legislative session, but  
25 the legislature had not funded the offices. Uh, it was a brand

1 new thing that started July 1<sup>st</sup> that year.

2           MR. ROSENZWEIG: Your Honor, I'm sorry to inter-  
3 rupt, but I'd just like to clarify that. I was on the  
4 board of the Death Penalty Resource Center and the  
5 chairman was Donis Hamilton.

6           The Resource Center was forbidden by the com-  
7 mission of the federal funds to give advice in state  
8 direct prosecutions and, you know, and in other words,  
9 it was the federal auditors wouldn't allow it. In  
10 1993 the Legislature passed the Public Defender  
11 Commission which went into effect on July 1, 1993.

12           Around that time or maybe slightly thereafter,  
13 the commission went into effect, shortly thereafter  
14 they hired Ms. Sallings from the Recourse Center to  
15 the commission, and at that time she had herself there  
16 and then she got a secretary and et cetera to do  
17 things. She had nothing so contemporaneously - - she  
18 was at both places that Mr. Stidham was referring to  
19 at various times during the pendency of the Misskelley  
20 trial, but in neither situation, I mean, since I have  
21 personal knowledge, I would spread that on the record.

22           MR. HOLT: Okay. I'm glad he did.

23           THE WITNESS: That way it makes sense to me now.  
24 I've always wondered.

25           MR. HOLT: It wasn't that she was blowing you

1 off; it was that she just didn't have the money.

2 THE WITNESS: She just said she couldn't help.

3 MR. HOLT: She couldn't help.

4 CROSS-EXAMINATION, continuing:

5 Q] Okay. But you had actually reached out and this was one of  
6 those places you reached out to?

7 A] That's what I thought it was for.

8 Q] There you go. Next, "conference with client on the 22<sup>nd</sup>,  
9 two and a half hours." Did you go to Jessie in terms of - - did  
10 you make any notes or make any recordings, contemporaneous  
11 writings similar to the June 11, '93 with regard to Mr.

12 Misskelley's version at that time of what happened when he was  
13 picked up or when he went to the police station June 3<sup>rd</sup>, 1993?

14 A] If I did, it would be in that section of my file.

15 Q] Okay?

16 A] And I very quickly looked at it during the recess and I  
17 didn't see any, but I didn't have time to go through all of it.

18 Q] Okay. If you said somewhere in those particular records,  
19 and you and I will have an opportunity to sit down and speed  
20 part of this up by pulling that out, but if it says something  
21 like "Daddy said they came by at approximately 9:30," that  
22 probably would have been a conference with the father, I assume,  
23 if Daddy said that?

24 A] Yes, I would assume - - that would be my assumption, as  
25 well.

1 Q] Because he had some knowledge of when they came and then  
2 when they came back for the polygraph test. That's two and a  
3 half hours, uh, is there, I mean, at that point is there a deal  
4 on the table?

5 A] I'm trying to remember. I'm thinking by that time we had  
6 rejected the prosecutor's offer and were moving towards trial.

7 Q] What kind of offer were you rejecting? Life?

8 A] It's in the transcript from the last testimony. I say  
9 "rejected"; I'm trying to remember when the date was in Marion  
10 that we had the hearing in my epiphany memo, uh, because that  
11 all happened contemporaneously, uh, for some reason, I'm  
12 thinking it was the 23<sup>rd</sup>, but it may have been the 27<sup>th</sup>. Y'all  
13 will have to help me with the exhibits, because I don't have  
14 them. I just don't know whether this was pre- or post-epiphany.

15 Q] Okay. That was the September 23<sup>rd</sup>?

16 A] It was the 23<sup>rd</sup> or the 24<sup>th</sup>, so this 9/22 would be, you know,  
17 it's possible that Judge Fogleman told me about the DNA on the  
18 phone ahead of the hearing, but my recollection is that he  
19 actually walked up to me at the hearing in Marion and told me  
20 himself personally.

21 Q] I believe that's what you testified to. "9/23/93, phone  
22 conference with Jessie, Sr.; phone conference with jailer." Do  
23 you have any recollection of what that was?

24 A] It may have been that Jessie, Sr. had driven all the way to  
25 Piggott to, uh, visit with his son and was denied access for

1 some reason; or I don't know what it was.

2 Q] Do you know if that happened, or were you able to smooth  
3 over some things like that?

4 A] There's a lot of turn-over in the county jail and it was  
5 probably a new guy that wasn't aware that Mr. Misskelley was on  
6 the visitation list, or something to that effect. That would be  
7 my guess.

8 Q] Okay. Page 14: "9/23/93, meeting with client, one hour."  
9 "9/24, phone conference with jailer and Jessie, Sr."; looks like  
10 what you just described. And this is State's Exhibit #31 - - do  
11 you see it?

12 A] It was here earlier. I remember seeing it. It looks like  
13 the hearing was on 9/26 - - actually, 9/27.

14 Q] Oh, the hearing where you would have been physically in the  
15 presence of John Fogleman?

16 A] Right. But if my memo was dated 9/23, that means he must  
17 have told me on the phone ahead of time.

18 Q] Okay?

19 A] Which would explain why I was researching mental evalua-  
20 tions and talking to, uh, with my client and Jessie, Sr.

21 Q] Okay. And "phone conference with state hospital regarding  
22 evaluation." If there is a memo to that effect, you would not  
23 have any reason to dispute that?

24 A] No, none at all.

25 Q] We may find that and mark that as an exhibit in the record.



1 "Phone conference with attorney Crow regarding hearing the 27<sup>th</sup>  
2 on the 24<sup>th</sup>, and the 25<sup>th</sup>, and this corresponds with the index  
3 that bears that same date that you have that we looked at  
4 earlier - - I can't remember the exhibit number, but I remember  
5 we had two. One had some handwritten and the other was undated?

6 A] Yes, sir.

7 Q] And the other, in fact, had a date?

8 A] That's when the epiphany occurred.

9 Q] Okay. And you catalogued the file?

10 A] I started cataloging everything that we had previously just  
11 kind of not ignored, but saw no need to go to the trouble of  
12 cataloguing, because it didn't seem to be important at the time.

13 Q] Okay. "Review discovery; review pleadings; draft motions;  
14 conference with attorney Crow regarding insanity; prepare for  
15 hearing; research Juvenile Code," because there was a part of  
16 this hearing that was going to deal with that; "research the  
17 motion for co-defendant," I assume this, uh, that you had been  
18 copied on something?

19 A] I'm assuming; yes, sir. Yes, and sometimes we would join  
20 in their motions and they would do the same as ours, to save  
21 time and keep the court file from getting too voluminous.

22 Q] "9/26, September, Marion," and there is an "interview  
23 witnesses on 9/26." What kind of witnesses would these be?

24 A] That would have - - I assume, when we started interviewing  
25 the, uh, alibi witnesses.

1 Q] Okay. So, shortly after, I mean, this is like a big ship  
2 and it takes a lot of turning for a big ship, and so you had  
3 this big ship going in one direction until a certain point and  
4 then you had to turn the ship around, essentially, as part of  
5 your representation?

6 A] Everything changed, uh, immediately and dramatically at  
7 that time.

8 Q] So in 9/26/93 the ship is going in another direction?

9 A] Yes, sir.

10 Q] Okay. "Interview witnesses, three and a quarter hours;  
11 meet with client's family, one hour; prepare for the hearing."  
12 I assume that's talking about the suppression. Had you had a  
13 motion to transfer to juvenile court?

14 A] I think that took place in October.

15 Q] Okay. But you did prepare for that, and I'll get to that  
16 later, but you did prepare for that?

17 A] Yes.

18 Q] Now is that the one that had the Wilkins interview?

19 A] I think it was actually in Osceola that we had that  
20 hearing.

21 Q] Okay. Four and a quarter hours. "Interview witnesses;  
22 conference with Jessie, Sr.; conference with assistant news  
23 director at Channel 5 regarding unethical conduct of the  
24 reporter." Do you know what that was about real quick?

25 A] I think it's what I was alluding to earlier, uh, when this

1 news reporter, uh, showed up at Jessie, Sr.'s house, had Jessie,  
2 Sr. call his son at the correctional facility in the Piggott  
3 jail and then, uh, handed the phone to the reporter - - or  
4 Jessie's girlfriend - - and they aired it on the ten o'clock  
5 news.

6 Q] I see?

7 A] And, uh, I was pretty upset about that.

8 Q] Okay. So in your view, that was against any interest that  
9 Jessie, Jr. might have had, and so you responded?

10 A] I didn't want them to do that anymore.

11 Q] "Prepare for hearing; interview witnesses; 9/27, court  
12 appearance and travel time; hearing, seven hours. Meet again  
13 with potential witnesses; travel time back to Paragould." On  
14 "9/28, conference with Crow," you know, the strategy conference  
15 following that hearing date?

16 A] Yes, sir.

17 Q] Okay. Next page, 16, we have on 9/29 we have a two hour  
18 conference with client and may or may not, I mean, there's no  
19 tape of that and there's no - - at this point- - but at this  
20 point you're saying that Jessie is telling you that his story is  
21 changing 180 degrees?

22 A] He completely, at that time, said "I wasn't there; I  
23 thought you were the police; I didn't want to die in the  
24 electric chair"; uh, "I thought that I had to tell that story in  
25 order to keep from being executed" uh, and that's when we

1 started, uh, getting our defense ready at the end of September.

2 Q] And we have here "conference with Crow regarding experts."

3 What kind of experts are we talking about at that point?

4 A] I think that we had already started trying to visit with  
5 Dr. Ofshe at that point, uh, and he recommended that I read Dr.

6 Gudjonsson's book, which I did, and uh, uh, we moved in that

7 direction. I sent Dr. Ofshe a copy of the, uh, confession,

8 which he analyzed and, uh, and then I found, uh, Warren Holmes,

9 uh, in Miami, uh, and asked him to review the polygraph charts.

10 Q] Well, that didn't happen until later, did it?

11 A] Uh, it looks like I started researching that issue on

12 October 5<sup>th</sup> on page 16 of the billing records.

13 Q] Okay, at the bottom. Is it possible that your file has

14 attorney notes - - when you read the Gudjonsson book, did you

15 make notes?

16 A] I saw them in there earlier, I believe.

17 Q] Okay?

18 A] When I was reviewing during the recess.

19 Q] Okay. Those are notes that you made in connection with

20 reading that text; is that correct?

21 A] That's correct.

22 Q] And that text was going to serve as part of the basis of

23 your attack on Misskelley's confession?

24 A] That's correct.

25 Q] Okay. And then as you said, on October 5<sup>th</sup> you did research

1 regarding polygraph and the suppression, and there was a phone  
2 conference with Wadley. Now, y'all are pretty much on the same  
3 side of the table, aren't you?

4 A] We were never on the same side of the table with Mr. Wadley  
5 and Mr. Ford. Uh, they pretty much refused to exchange any in-  
6 formation or provide any assistance at all. The only time I  
7 heard from them is when they'd send me copies of their pleadings  
8 or they wanted to call and ask if Jessie was going to testify or  
9 not. That was, uh, pretty much the extent of their phone  
10 conversations.

11 Q] Okay. Well, they were, suffice it to say, they were  
12 worried that Jessie might testify?

13 A] Certainly.

14 Q] Notwithstanding some of the inconsistencies of the  
15 statement?

16 A] They expressed to me that they were confident that they  
17 were going to, you know, pretty much have their way with him.

18 Q] Paul Ford expressed confidence that he could do that?

19 A] I know that's hard to imagine, but yes, he did.

20 Q] Page 17, "October 5, research on suppressing statement of  
21 juvenile"; a move that is just one more bullet in your gun, I  
22 assume?

23 A] Yes, sir.

24 Q] Okay. October 6, you reviewed discovery; researched  
25 suppression; another phone conference with attorney Wadley.

1 Okay, now y'all are talking quite a bit with these guys?

2 A] He's real nervous and is calling constantly to see what the  
3 latest, uh, you know, "is your guy going to testify, or not?"

4 Q] Well, but 10/6, you know the answer, don't you?

5 A] Yeah, I do. Uh, and, uh, there was that one small tidbit  
6 of information that they shared with regard to a phone conver-  
7 sation with Dr. Peretti that testified about, uh, back in  
8 September. Uh, but other than that, uh, there was very little  
9 cooperation between the Baldwin team and the Misskelley team.

10 Q] Do you surmise whether or not they think that giving you  
11 that information wouldn't hurt them and it might actually help  
12 them?

13 A] I have never been able to understand the logic of them not  
14 telling me everything they could, because had Mr. Misskelley  
15 been acquitted, I think it would have been very, very difficult  
16 for, uh, uh, for the subsequent trial to turn out the way that  
17 it did.

18 Q] Okay. "October 7, '93, draft motions for the deadline  
19 phone conference with potential witness; on the 8<sup>th</sup>, draft an  
20 order"; okay, here we go: "phone conference with potential  
21 expert October 10, '93, half an hour." Who is that? Is it Dr.  
22 Wilkins?

23 A] It's either Ofshe or Holmes.

24 Q] Okay. It couldn't be Dr. Wilkins at that point?

25 A] It's possible, yes, sir, I mean, those were the only three

1 that we had, so it was one of the three. Or it very well have  
2 been Dr. Wilkins because, uh, Judge Burnett kept making it clear  
3 that if we were going to raise insanity, that we needed to do  
4 it, uh, within a certain deadline.

5 Q] And I believe that you had also - - and you had contacted  
6 the state hospital regarding in-patient versus out-patient  
7 forensic examination. Do you recall that?

8 A] My recollection, again, without having the benefit of my  
9 file for a number of years, is that I think I specifically  
10 called them to inquire as to whether or not a copy of the  
11 evaluation would automatically be sent to the prosecutor, and I  
12 think their reply was yes, and that's when I started looking for  
13 my own.

14 Q] Well, a point in fact, the report is sent, I mean, mental  
15 disease or defect is an affirmative defense. So it has to be  
16 pled and the, I believe the statute says that the report is sent  
17 to the circuit clerk's office, but you knew, I guess what I'm  
18 getting at, you knew that if a forensic examination was done,  
19 pursuant to raising mental defect or defense, that the court  
20 would see it, defense counsel would see it, the prosecutor would  
21 see it?

22 A] Yes, sir, that was my fear.

23 Q] Okay. And you didn't want that to happen?

24 A] No, I wanted to have the option of, uh, having my own  
25 expert conduct that.

1 Q] And so that was - - I just need to say it for the record,  
2 and the same reason for going through this - - that was part of  
3 your strategy?

4 A] Yes, sir.

5 Q] Okay. There is a motion to transfer on October 6<sup>th</sup>. I  
6 assume that's the juvenile?

7 A] Transfer to juvenile court; yes, sir.

8 Q] Okay. "Review discovery October 7<sup>th</sup>; drafted motions for  
9 the deadline; phone conference with a potential witness; draft  
10 order for hearing on 27<sup>th</sup>." Oh, I'm sorry. I got out of line  
11 here. There was a "short phone conference with the judge on the  
12 12<sup>th</sup> of October"; next page, page 18: "Letter to Fogleman and  
13 reviewing discovery, on the 12<sup>th</sup>; October 13<sup>th</sup>, research  
14 suppression," and I assume you were at the ASU law library at  
15 that point?

16 A] Yes, sir.

17 Q] Is that you, or Greg?

18 A] Uh, for some reason I want to say it was me. I seem to  
19 have a recollection of doing that.

20 Q] Okay. "Conference with potential witness DJK." Who might  
21 that be? Would that be Dollihite, James Dollihite?

22 A] Uh, I would say that was probably him. I don't know who  
23 DJK is.

24 Q] Okay. If it turns out to be Dollihite, who was he?

25 A] I think he was one of our alibi witnesses.



1 Q] Let's see. "Phone conference with Jessie, Sr. on the 13<sup>th</sup>;  
2 research Wiley publication"?

3 A] That would be Gudjonsson's book.

4 Q] Okay. "Research on statement; phone call from client's  
5 mother; transcribe notes from witnesses." So these were, I  
6 assume, something like field notes. Now were you doing these at  
7 the time, or did you have Ron Lax helping you?

8 A] Mr. Crow and I were doing those.

9 Q] Okay?

10 A] Later on as we started to run out of time, as trial date  
11 drew near, uh, Mr. Lax was kind enough to assist us in running  
12 down a few witnesses.

13 Q] It didn't hurt him, either, did it? Mr. Lax, it didn't  
14 hurt him if he found you an alibi witness and you had a witness  
15 to testify as an alibi witness, then that alibi witness was  
16 believed in acquitting your client, as you said earlier, you  
17 thought that was a good strategy that worked for him?

18 A] That's why I didn't see the logic in Mr. Ford and Mr.  
19 Wadley's unwillingness to share information.

20 Q] Okay?

21 A] Because I thought they were pretty much both in the same  
22 boat. Mr. Lax, obviously, as you suggested, recognized that.

23 Q] "10/14, conference with attorney Crow; phone conference  
24 with DRO." There is a letter, and this is Dr. Ofshe; is that  
25 right?

1 A] Yes.

2 Q] Okay. So that's the first contact with him, or that's  
3 noted as specifically as that?

4 A] It was a phone call, as I recall.

5 Q] Okay. "Research and draft motion to conduct deposition;  
6 phone conference with MP regarding *Phoenix* case." What's that?

7 A] MP. I don't know who MP is, but I know what the *Phoenix*  
8 case is. The *Phoenix* case is a false confession case, uh, that  
9 happened back in the late 70s or early 80s. There were several  
10 Buddhist priests who were robbed and murdered in their temple in  
11 Phoenix and, uh, after a very extensive and lengthy interroga-  
12 tion, four people confessed and then later they found someone  
13 else to be in possession of the actual murder weapon, and then  
14 they had six people who had confessed, uh, four said they did it  
15 and two said they did it, and the two said they were angry  
16 because four were getting credit for their work.

17 Q] I see?

18 A] And so it was a similar case and I was researching it. But  
19 I don't know who MP is.

20 Q] Okay. Next page, page 19: "10:15, conference with DWW;  
21 conference with client." Who is DWW? Is that Wilkins?

22 A] Dr. William Wilkins. Yes.

23 Q] Okay. "Phone conference with attorney Price; phone  
24 conference with Fogleman and Crow; research on 10/17; 10/18,  
25 more research; letter from attorney Ford that you reviewed;

1 prepared for the hearing; phone conference with client 10/18;  
2 phone conference with Jessie, Sr., on that particular day; and  
3 you talked with the sheriff's office, as well; did more research  
4 on freedom of information; research on discovery of other  
5 crimes, research on transfer to juvenile court. 10/19/93,  
6 prepared for hearing in Jonesboro and court appearance; prepared  
7 for a hearing and trip to Jonesboro, attend hearing, and review  
8 notes." Which hearing? What was the purpose of that hearing?

9 A] I think that's the hearing where Judge Burnett scheduled  
10 the trials, and actually granted the change of venue motion.  
11 That's my recollection.

12 Q] Okay. Page 20: "October 20<sup>th</sup>, '93, meeting with DTS" I  
13 guess that would be Greg?

14 A] Yes.

15 Q] "10/23/93, conference with DTS." Here again, I guess we're  
16 talking research regarding suppression and a three and half hour  
17 time period of drafting an order; research and conference with  
18 the client." It appears from this record there is not a week  
19 that goes by that you don't have some contact with Jessie Miss-  
20 kelley, Jr.; is that correct?

21 A] It was steady and constant.

22 Q] Okay. "October 22<sup>nd</sup>, letters to Judge Burnett and counsel;  
23 drafting orders; again, another conference with client; phone  
24 conference with client's father, 10/22/93"; and there may be a  
25 contemporaneous memo with that, and you and I will pull that out

1 and leave the record open for any memo that you might be able to  
2 identify from that conference. "10/23, research regarding  
3 suppression; 10/25, phone conference with Val Price; phone  
4 conference with EWB." Who was that?

5 A] I have no idea.

6 Q] Okay. "10/26, conference with attorney Crow regarding sup-  
7 pression; conference with Judge Burnett regarding language  
8 orders of September 27<sup>th</sup> and October 19<sup>th</sup>; conference with  
9 attorney Crow and motion to transfer to juvenile; motion  
10 regarding mental retardation status, Act 402"; essentially, that  
11 was avoiding the death penalty?

12 A] Yes, sir.

13 Q] Mental retardation, was that statute in effect, or had it  
14 just come into effect?

15 A] Apparently since there was an act number listed, I think it  
16 was something that was relatively new.

17 Q] Okay. And now Jessie didn't meet the perimeters of the  
18 statute?

19 A] Judge Burnett said he didn't.

20 Q] Okay. And he didn't get the death penalty either, did he?

21 A] No, sir, he didn't.

22 Q] Page 21: "10/27/93, review discovery information with  
23 prosecutor"; would that have been Fogleman or Davis?

24 A] It's just been too many years. One or the other, but I  
25 don't know for sure.

1 Q] Who did you have more contact with in this case on a day-  
2 to-day basis?

3 A] Uh, Fogleman.

4 Q] "Conference with attorney Crow regarding witnesses;  
5 conference with attorney Crow regarding Johnson"; who was this -  
6 - Kevin Johnson?

7 A] I believe so.

8 Q] And he was the search and rescue person?

9 A] Yes, and I interviewed him myself. I remember that. EWW?

10 Q] Could that be, could two of those be switched; could that  
11 be Wilkins? I believe that's Wilkins. Maybe it should be WEW?

12 A] It probably is.

13 Q] William E. Wilkins, regarding Act 402.

14 A] That makes sense.

15 Q] Okay. So you would have used Dr. Wilkins in some manner in  
16 support of testimony saying that Jessie Misskelley was retarded  
17 to a degree that you couldn't impose the death penalty?

18 A] Yes, that was the purpose of the hearing in October.

19 Q] Okay. "Reviewed prosecution evidence regarding statement  
20 of Buddy Lucas." Do you recall that?

21 A] Yes, sir.

22 Q] And what was that all about?

23 A] Uh, the police had interviewed Mr. Lucas and, uh, Mr. Lucas  
24 reacted very similar in the way that Mr. Misskelley did, and  
25 essentially gave the police some information, uh, and uh, scared

1 him, essentially, uh, Mr. Lax and I later interviewed Mr. Lucas,  
2 uh, with his parents present and he essentially recanted every-  
3 thing that he had told the police. There was something about,  
4 uh, he had made some comment that, uh, Mr. Misskelley had told  
5 him that he was involved somehow, or left a pair of shoes at his  
6 house, uh, something to that effect. I can't recall the  
7 specifics; it's been too many years.

8 Q] If there is a - - would it be consistent with a memo, if  
9 there is a memo in your file, we'll leave the record open and  
10 produce that. There are a couple of memos where Buddy Lucas  
11 initially said that he had come to Jessie, Sr.'s house on the  
12 night of the murders with some barbequed chicken, and that  
13 Jessie, Sr. said he wasn't there; he had gone down the road with  
14 some folks. And then Buddy Lucas in fact did recant his state-  
15 ment and he was put on a polygraph and they said that he was  
16 lying. Does that ring a bell?

17 A] That sounds familiar. But again, without benefit of look-  
18 ing at my file, I can't say with any degree of specificity.

19 Q] But if there is a memo in there, we can identify that?

20 A] Sure. Absolutely.

21 Q] And essentially, Buddy Lucas had made a statement to the  
22 police, and then he had denied that it was true and he failed a  
23 polygraph in regard to it, you know, when he denied it was true  
24 and failed the polygraph in that regard, but that wasn't  
25 admissible, was it?

1 A] They pretty much used the same tactic on him as they were  
2 on everyone else. They would interview a witness, conduct the  
3 polygraph exam and if Officer Durham determined that the witness  
4 was being truthful, they would let him or her go. If he felt  
5 there was some deception, then they would increase, uh, the  
6 interrogation.

7 Q] Well, was there any reason for Buddy Lucas to give this  
8 statement in the first place about Jessie not being there and  
9 about Jessie later showing up the next day and being nervous,  
10 about seeing Jessie nervous, and Jessie saying "those two"...

11 A] ...as I recall...

12 Q] ...let me finish my question - - Jason and Damien  
13 sacrificing those three kids? I mean, is that, is there any  
14 reason for him to say that to authorities?

15 A] I think they scared him.

16 Q] Scared him into saying that?

17 A] Yes, sir.

18 Q] Okay. But you knew that that wasn't admissible because he  
19 denied that any of it was true and even though he had failed a  
20 polygraph in his denial, according to them, that they couldn't  
21 get the statement out; right?

22 A] I think they felt, and then again, this is just my  
23 recollection, uh, a sixteen-year-old recollection, but I think  
24 they were just so unimpressed with the voracity of his statement  
25 that they decided not to use it at trial.

1 Q] Well, but if there is a memo in your file, we can identify  
2 that and put that into the record?

3 A] Yes, sir. In fact, I think there's probably a transcript  
4 of an interview that Mr. Lax and I did with Mr. Lucas. I  
5 remember going out in the country, way out almost to Helena, I  
6 think, to find this young man and talk to him.

7 Q] I see. Now is he the one who also had a patterned hair-  
8 cut, the same as Jessie?

9 A] I don't, I don't recall that.

10 Q] Next, there's a "conference with detectives Gitchell and  
11 Ridge, an hour and a quarter. "Conference with Jim McNease"; is  
12 he an alibi witness?

13 A] Yes, sir.

14 Q] "Conference with Jessie, Sr., this is an hour and third,"  
15 or so; and then I think we have a list here of alibi witnesses  
16 that you interviewed or Greg interviewed. Did you interview  
17 them together, or separately?

18 A] I think we split the list up and he interviewed some and I  
19 interviewed some.

20 Q] Okay. So there's Stephanie and Buddy Dollar, Kevin John-  
21 son, Christie Jones, Susie Brewer, and then travel time back and  
22 forth from Paragould; right?

23 A] Yes, sir.

24 Q] Page 22: "Discovery review; phone call from client's step-  
25 mother on October 27<sup>th</sup>; October 28<sup>th</sup>, review discovery information



1 from prosecutor; Greg met with you for an hour; phone conference  
2 with DRO, fifteen minutes; conference with attorney Crow regard-  
3 ing suppression; letter to Fogleman; letter to Barbara Fisher  
4 and review discovery; more of review discovery." Did you ever  
5 consider the possibility of Jessie entering a no contest plea?

6 A] I don't believe so.

7 Q] You wouldn't necessarily plead him to the court?

8 A] No, I don't think that was ever considered.

9 Q] To quash the death penalty?

10 A] Again, I don't think that was ever an option that we  
11 considered.

12 Q] Okay. "November 2<sup>nd</sup>, '03, conference with sheriff;  
13 conference with client; review letter from DWW"; I assume that's  
14 Wilkins. "Conference with county judge, clerk; review discovery  
15 from JC, November 3<sup>rd</sup>"?

16 A] I have no idea who JC is. Hopefully there is a letter or  
17 something in my file.

18 Q] We'll look. "Conference with attorney BB"?

19 A] That would be Brad Broadway.

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

21 A] Uh, HBO, and the film makers were wanting to, uh, do a  
22 documentary, uh, and film the case as it was unfolding. And I  
23 didn't feel comfortable negotiating with them, or dealing with  
24 them as they were offering an honorarium to the victims'  
25 families and, uh, the defendants and their families. And I just

1 didn't feel comfortable and so I referred, uh, Mr. Misskelley,  
2 Sr. to Mr. Broadway, who, uh, it's my understanding, negotiated  
3 some sort of honorarium that was paid.

4 Q] I see. Next page, 23: "November 4, phone conference with  
5 DRO," Ofshe, I assume?

6 A] Yes, sir.

7 Q] "Review transcript from 9/27 hearing; November 5,  
8 conference regarding court files, suppression and hearing date;  
9 phone conference with Jessie, Sr., November 7<sup>th</sup>; conference with  
10 client; research and suppression/corroboation of confession;  
11 meeting" - - I guess travel time to Piggott, as you met with  
12 Jessie for approximately half an hour on the 7<sup>th</sup>?

13 A] Yes, sir.

14 Q] Okay. "Conference with Damien's attorney," I guess Price  
15 or ...?

16 A] One of the two.

17 Q] On the 8<sup>th</sup>. "Phone call from prosecutor and review  
18 discovery on the 8<sup>th</sup>; 9<sup>th</sup>, phone conference with Dr. W" - -  
19 Wilkins; "review autopsy." "November 10<sup>th</sup>, conference with  
20 William Wilkins, two and a half hours; conference with attorney  
21 Crow;" next page: This is where you prepared motions, different  
22 motions regarding either the death penalty, transfer, again,  
23 there is another organize and review file as it stood in the  
24 defense posture as of November 15<sup>th</sup>?

25 A] Yes, sir. I, I was incorrect earlier. The hearing in

1 Osceola was actually November 16<sup>th</sup>, not October.

2 Q] Okay. And you're right; it was in Osceola?

3 A] That's correct; yes, sir.

4 Q] "17<sup>th</sup>, phone conference with Jessie, Sr.; November 18<sup>th</sup>,  
5 conference with client, two and three-quarters hours; conference  
6 with attorney Crow; November 21, phone conference with Jessie,  
7 Sr.; phone conference with attorney Gia Vinde"; who are we  
8 talking about on the 19<sup>th</sup> and attorney ?

9 A] I spoke with some attorneys in Florida who had given me  
10 some information about a statute that was being passed, uh, a  
11 model statute, a uniform statute that was being passed and most  
12 state legislatures regarding the police officer bill of rights.

13 Q] Bill of rights?

14 A] And so I'm assuming that's - - in fact, they had a case,  
15 uh, where a confession was thrown out and suppressed on that  
16 very issue. And, uh, they told me about, uh, I found a case on,  
17 uh, did my research, I called them directly and talked to them  
18 about it. I think they may have actually sent me a copy of  
19 their brief and, uh, I filed the motion when I discovered that  
20 Arkansas had passed this statute.

21 Q] Okay. So this was kind of thinking outside of the box?

22 A] Uh, we were trying to think of everything we could to, uh,  
23 augment our suppression motion.

24 Q] Okay. "November 21<sup>st</sup>, phone conference with Jessie, Sr. ;  
25 22<sup>nd</sup>, research suppression; comment on evidence; voir dire; jury

1 instructions; conference with Greg." And that continued on the  
2 23<sup>rd</sup>?

3 A] Yes, sir.

4 Q] "Phone conference with court clerk," now you had a - - was  
5 any of that with regard to, like, jury questionnaires?

6 A] I would assume so. I would assume by then that, uh, the  
7 questionnaires were coming back and that we were probably check-  
8 ing on that.

9 Q] So you did research, I mean, in fact, you had a jury con-  
10 sultant?

11 A] We did. Yes, we did.

12 Q] And I guess funds were provided for that?

13 A] Actually, they volunteered and, uh, there was some question  
14 about whether or not, uh, they should submit a bill or whether  
15 they were paid at the end of the case. I, I simply don't  
16 recall.

17 Q] Okay.

18 THE COURT: I do. They submitted a bill at the  
19 end of the trial, and I paid a portion of it.

20 THE WITNESS: That sounds familiar.

21 CROSS-EXAMINATION, continuing:

22 Q] Page 26: "Phone conference with Jessie, Sr., December 1<sup>st</sup>;  
23 review and organize file; conference with client on December  
24 1<sup>st</sup>." I'm not going to get bogged down in this. I'm just trying  
25 to pin this with this file.

1           THE COURT: Did you want to quit at 4:00, or do  
2           you want to go a little bit longer?

3           MR. HOLT: A little bit longer.

4           THE COURT: Okay.

5 CROSS-EXAMINATION, continuing:

6 Q] I'm not going to get bogged down in this at this point, but  
7 let me tie this in with this particular date. I show you this  
8 as State's Exhibit #14 and this comes from the attorney notes,  
9 memo file. Now would that correspond with, and I know you can't  
10 recollect perfectly what this is, but does this correspond with  
11 the December 1<sup>st</sup>, 1993 conference with client?

12 A] (Witness examining same.) The date on the memo and the  
13 date in the billing records coincide.

14 Q] Was this the kind of memo that you would sometimes prepare  
15 in the course of your work on this case?

16 A] Yes.

17           MR. HOLT: We would move that that be introduced.

18           THE COURT: All right, it may be received.

19 (WHEREUPON, State's Exhibit #14 was admitted and received into  
20 evidence and is appended on page .)

21 CROSS-EXAMINATION, continuing:

22 Q] Moving on, we go to on that same date it says "review new  
23 discovery; catalogue files; sent material to client." Do you  
24 know what that might have been?

25 A] No, sir, not unless it would have been mail, just mail from

1 family members.

2 Q] Okay. "12/7/93, phone conference with Fogleman, letter to  
3 the judge, reviewed and catalogued file; 12/8, researched a  
4 comment on the evidence; 12/9, letters, drafted orders,  
5 research, almost eight hours; and there's "suppression catalogue  
6 file and prepare suggestibility facts." What exactly is that?

7 A] That would have to do with, uh, the Gudjonsson suggest-  
8 ibility scale that we asked Dr. Wilkins to perform on Mr. Miss-  
9 kelley.

10 Q] Okay. Now was this Dr. Wilkins preparing the suggest-  
11 ibility facts, or was this you providing him with some - - well,  
12 I guess what I'm getting at, do you know if there was any sort  
13 of notation or anything like that?

14 A] It's also possible, Counselor, that, that, uh, I myself was  
15 preparing suggestibility, uh, facts that I could present to His  
16 Honor in arguing the suppression motion.

17 Q] Okay?

18 A] Uh, it would be one of the two. It may just be a coin-  
19 cidence that I used that term, and that's the same term that's  
20 in the suggestibility scale.

21 Q] I see. And you've already ordered the book from Wiley;  
22 we've seen that?

23 A] Yeah, I've already read that by that point.

24 Q] "December 10, 93, conference with DWW, conference with  
25 client, draft motion regarding - - ", and this 12/10/93, that is

1 the date of the video and that was played at the last hearing?

2 A] The video with Dr. Wilkins?

3 Q] With Dr. Wilkins?

4 A] Okay.

5 Q] In fact, that's the only video we've got; is that correct?

6 A] That's the only one I remember.

7 Q] Okay. And you never made any video with anyone else, did  
8 you?

9 A] Not that I recall, sir.

10 Q] "December 11<sup>th</sup>, phone conference with Jessie, Sr., research  
11 and draft motion"; we've already commented on the evidence.

12 MR. HOLT: Judge, if we could, we could take the  
13 rest of the day and perhaps Mr. Rosenzweig, uh, if he  
14 wants to be there, that's fine, but I talked to Mr.  
15 Stidham earlier about this, about going through this  
16 particular file and then just making sort of a  
17 condensation of those particular memos that are - - I  
18 have a list of them throughout the billing records and  
19 we can probably, first thing, or after Mr. Crow  
20 testifies in the morning, we could save a little time  
21 just putting that in.

22 And then I could also help visit with Mr.  
23 Rosenzweig about the transcript of the Ofshe tape,  
24 which is about two and a half hours, and then just put  
25 the transcript in and then if something arises - - now

1 Mr. Stidham may in fact still be under the Rule, but  
2 it would be something that everybody could pass the  
3 transcript around.

4 And I don't think it would take very long - - it  
5 wouldn't be now, it would be much later, but it would  
6 be, I mean, it would satisfy everybody's cross-  
7 examination.

8 MR. ROSENZWEIG: If I, if I understand him  
9 correctly, I think that we can talk about it. I mean,  
10 our position is, is to streamline it so that we don't  
11 have to listen to a two and half-hour video, if that's  
12 what we want to do.

13 THE COURT: Well, I'd sure like that.

14 MR. HOLT: All in favor, say I.

15 MR. ROSENZWEIG: So if that's at all possible,  
16 then we would like to do that.

17 THE COURT: Are you going to have some re-direct?

18 MR. ROSENZWEIG: Not a whole lot.

19 THE COURT: Well, then we need him back after  
20 y'all get through this afternoon and in the morning?

21 MR. HOLT: Yes, sir.

22 THE COURT: All right. Court will be in recess  
23 until 9:30 in the morning.

24 MR. HOLT: Thank you, Your Honor.

25 (WHEREUPON, a recess was taken April 2, 2009; proceedings



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?