

1 THE COURT: Let's take a ten-minute recess.
2 (WHEREUPON, a recess was taken; proceedings resumed as follows,
3 to-wit:)

4 MR. HOLT: I call Dan Stidham.
5 THEREUPON,

6 DAN STIDHAM
7 was recalled as a witness by and on behalf of the Petitioner and
8 having been duly sworn, was examined and testified as follows,
9 to-wit:

10 CROSS-EXAMINATION

11 BY MR. HOLT:

12 Q] Good morning, Mr. Stidham.

13 A] Good morning.

14 Q] I have several documents that were retrieved from State's
15 Exhibit #12, which was a file you had previously identified and
16 you and I have gone through that file and I have subsequently
17 marked particular documents and at that time you identified
18 them. And I wish for the record that you would identify them
19 and we can briefly describe just what these different documents
20 are. And we'll start with what's been identified with State's
21 12F, if you would identify that, please?

22 A] (Witness examining same.) This appears to be the notes
23 that I took, uh, on February 8th at the Department of Correction
24 when I interviewed Mr. Misskelley.

25 Q] And were those notes contemporaneous with the taped inter-

1 view that you conducted of Mr. Misskelley?

2 A] Yes.

3 Q] Okay. I show you what's been marked as State's Exhibit 12G
4 and that may be in evidence somewhere else, but it is marked
5 here and it was in that portion of the file. Could you describe
6 what that is?

7 A] (Witness examining same.) This is a time line of Mr. Miss-
8 kelley's alibi that we prepared before trial.

9 Q] So would that have been part of your - - there was made
10 mention at a previous hearing about a file number 24 that said
11 "Trial Strategy" and it was empty, but there were things that
12 were in other portions of the file. Was this part of your trial
13 strategy, the alibi?

14 A] Sure.

15 Q] Is it conceivable that was also in that file?

16 A] At one time it was. I assume that after the trial, or
17 during the trial or while we were working on the direct appeal,
18 that it apparently got shuffled.

19 Q] Okay. And was that prepared by you, or Mr. Crow?

20 A] Yes, Mr. Crow's handwriting is on the back page.

21 Q] 12H, would you identify that, please?

22 A] (Witness examining same.)

23 Q] And what is 12H?

24 A] This is a time line of Mr. Misskelley's interrogation that
25 we had been able to glean from the officer's notes and what in-

1 formatin Mr. Misskelley was able to provide us.

2 Q] Was that prepared in preparation of the trial, or of the
3 suppression hearing, or both?

4 A] Both.

5 Q] Both. And do you recall whether or not it was used in the
6 trial in some way?

7 A] I'm sure that I either had it memorized or referred to it
8 when I was cross-examining the officers, uh, as well as the
9 witnesses at the suppression hearing, and also at the trial.

10 Q] Okay. Do you recall at the suppression hearing, do you
11 recall the record - - and I may have or may not, but I'm going
12 to show it to you.

13 A] Is this the record of the trial?

14 Q] Yes, this part is the record of the suppression hearing and
15 where you were questioning Inspector Gitchell, and it starts at
16 1071 of the record. If you would, I should have showed you this
17 a little bit earlier, but if you would, just read for yourself
18 the 1071 through 1073 questions?

19 A] 1071 through 1073?

20 Q] Yes.

21 A] I'm going to have to back up and see who the witness was.

22 Q] I believe on 1071 it will tell you, it mentions Mr.
23 Gitchell?

24 A] Oh, okay, it sure does.

25 (Pause.)

1 A] All right.

2 Q] Does that, uh, do you remember that questioning of him?

3 A] Yes, sir.

4 Q] Does that comport roughly with the notations that you made
5 in that 12H?

6 A] It's in the ballpark. Yes, sir.

7 Q] Okay. When you say "it's in the ballpark," what do you
8 mean?

9 A] Well, since I was never allowed to take the deposition of
10 the officer, uh, all of the information that he was providing me
11 about what happened that wasn't contained in his notes, was, was
12 still a mystery to me.

13 Q] But you did have his notes?

14 A] Yes, I did.

15 Q] And we had mentioned earlier that the Supreme Court, in its
16 opinion in this particular case on direct appeal, uh, I read to
17 you what they said where they set out the facts in terms of the
18 statement that Mr. Misskelley gave, and they said that "it is
19 sufficient to say the Appellant was questioned off and on over a
20 period from 10:00 a.m. until 2:30 p.m. At 2:44 p.m. and again
21 at approximately at 5:00 p.m. he gave statements to police in
22 which he confessed his involvement in the murders. Both
23 statements were taken accordingly."

24 A] That pretty much comes from the record. Yes, sir.

25 Q] Okay. And that does comport with what you -- well, answer

1 me this: Was your time line, was that done in any way in
2 connection with Dr. Ofshe? Do you recall?

3 A] Not that I recall.

4 Q] Okay. Did he use the notes when he interviewed Mr. Miss-
5 kelley?

6 A] He had access to the officer's notes and a transcription of
7 the confession and perhaps even a [sic] audio tape of it.

8 Q] Okay. So if that transcript of that interview by Dr. Ofshe
9 indicates that he in fact was asking Mr. Misskelley about
10 various things in the officer's notes, you wouldn't have any
11 reason to dispute that, would you?

12 A] No, I'm sure that I provided him with the notes.

13 Q] Okay?

14 A] In fact, uh, I think as I testified yesterday, uh, at the
15 suppression hearing after His Honor allowed Dr. Ofshe to remain
16 in the courtroom during the officer's testimony, and that was
17 the first time that Dr. Ofshe was able to hear their side of the
18 story and, uh, he changed his opinion, based on what he heard,
19 and we didn't put him on the stand that day.

20 Q] I see. So you didn't put Dr. Ofshe on the stand, based
21 upon what he heard?

22 A] What he heard; that's correct.

23 Q] Okay?

24 A] He asked me not to put him on the stand.

25 Q] Okay. 12I, I'll show you that and ask you if you can

1 identify that for the record?

2 A] (Witness examining same.) This appears to be a memo that
3 was prepared on September 29th, 1993.

4 Q] And what's the substance of that memo?

5 A] It appears to be a timeline or a narrative of what we
6 thought had occurred, uh, the morning that Mr. Misskelley was
7 interrogated and arrested. There is another notation on page 2
8 that's dated October 21st and it looks like it's a repeat of some
9 of the information.

10 Q] And that was contained in your file?

11 A] Yes, sir.

12 Q] As attorney work product, I assume?

13 A] Yes, sir.

14 Q] At that point. Okay. State's Exhibit 12J, if you could
15 identify that?

16 A] (Witness examining same.) Would you like for me to identi-
17 fy this part of the exhibit, too?

18 Q] Does it have a separate...?

19 A] ...it's a separate date.

20 Q] I think that's actually a review of something we've already
21 had, but it was with that.

22 A] Okay. This is a memo that I prepared for the file on
23 October 27th, 1993 and it is a memo regarding a visit that I
24 taped at the West Memphis police department regarding a video
25 taped interview that they had conducted of a person named Buddy

1 Lucas.

2 Q] Did Mr. Lucas testify at trial?

3 A] He did not.

4 Q] Now did you subsequently end up having an occasion to
5 interview Mr. Lucas pursuant to your trial preparation?

6 A] I did.

7 Q] State's Exhibit 12K?

8 A] (Witness examining same.) This appears to be the handwrit-
9 ten version of the typewritten version of the earlier exhibit.

10 Q] Okay. When you say "earlier," does that bear a date?

11 A] 10/21/93. And I think that was part of a previous exhibit
12 and sometimes I would handwrite things out and, uh, the
13 secretary would type them up for the file so it would be easier
14 to read.

15 Q] So that confirms that that was the memo on that particular
16 day, that it was from notes that you had taken pursuant to an
17 interview with Mr. Misskelley?

18 A] It appears to be; yes, sir.

19 Q] 12 - - this is a little bit out of chronological order - -
20 but let me show you 12L, and if you would, just refer to it by
21 the date?

22 A] (Witness examining same.) December 21st, 1993, uh, this is
23 a memo I made to the file regarding a phone call I had received
24 back from Warren Holmes, regarding the polygraph exam.

25 Q] Did you subsequently retain Mr. Holmes as an expert?

1 A] He subsequently volunteered.

2 Q] Okay. Volunteered. Did he testify at trial?

3 A] He testified both at the suppression hearing and at the
4 trial. And there was also a proffer of his testimony made at
5 both the suppression hearing and the trial, as I recall.

6 Q] Okay. Well, that would have been with the polygraph
7 results; I assume?

8 A] Yes.

9 Q] So you raised, so in a nutshell then, Mr. Holmes's testi-
10 mony was favorable to you and it involved a polygraph, and you
11 sought its admission?

12 A] That's correct, under *Patrick vs. State*, uh, the Court had
13 held that - - one of those was a U.S. Supreme Court decision and
14 the other is an Arkansas Supreme Court decision that said that
15 "any evidence that tended to show the innocence of the accused
16 would be admissible, irregardless of its scientific
17 reliability." The Arkansas case referred specifically to a
18 portable breath test on the side of the road used by officers at
19 DWI stops.

20 Q] I see. 12M, and can you identify that?

21 A] (Witness examining same.) This is a memo to the file that
22 I prepared, uh, September 24th, 1993 and, uh, it recites a
23 conversation that I had with the state hospital about how they
24 conduct forensic examinations, whether they're in-patient or
25 out-patient, and it's attached to an additional memo on the same

1 date, uh, regarding a phone conversation that I had with Robin
2 Wadley regarding some recent motions.

3 Q] I see. Are they related, at all?

4 A] Uh, no, not really.

5 Q] And they did occur on the same date in September?

6 A] It appears I prepared them the same day. Yes, sir.

7 Q] Do you know if this was before or after the memo that you
8 prepared with regard to the...

9 A] ...I believe they're the same day or the day before.

10 Q] Okay. Do you know?

11 A] I'd have to look at the exhibit again, uh, but I think it
12 could have been the same day. It's either the same day, or the
13 day before. It's just within twenty-four hours.

14 Q] Okay. 12N?

15 A] (Witness examining same.) This appears to be notes that I
16 took of an interview with Mr. Misskelley on July 12th.

17 Q] Are those handwritten notes?

18 A] Yes.

19 Q] And they are yours?

20 A] They are mine. Yes, sir.

21 Q] Do you know if those were ever transcribed or not?

22 A] If they're in the file, they were, but I didn't see them
23 yesterday when we were reviewing.

24 Q] Okay. 12O, can you identify that?

25 A] (Witness examining same.) This is a memo from Mr. Crow to

1 me dated June 29, 1993, on where Greg advises me that he thought
2 it was extremely important that we obtain Mr. Misskelley's
3 educational records as soon as possible, uh, and, uh, there is a
4 notation down at the bottom where I responded back to him that I
5 have already taken care of this and the records from his school
6 had arrived that very day.

7 Q] I see. In fact, in your file that you turned over to
8 defense attorneys, or subsequent attorneys for Mr. Misskelley,
9 had an extensive accordion file that contains that in it,
10 doesn't it?

11 A] There was quite a bit of material, as I recall, from his
12 previous mental evaluations, things that he had done while he
13 was in grade school and later on, and I think as, uh,
14 adolescent.

15 Q] 12P, could you identify that and describe what it is?

16 A] (Witness examining same.) This is a memo from my paralegal
17 to Mr. Crow and myself dated September 22, 1993, apparently one
18 or the other of us had asked her to review the pleadings portion
19 of the file and make a chronological list of everything that had
20 been filed, because I'm assuming that the motion deadline was
21 approaching.

22 Q] I see. And who was that who generated that memo for you?

23 A] Ms. Krosp.

24 Q] 12Q. This should look familiar, but it was in that - -
25 well, you can tell us where you found that, for the record?

1 A] I believe that this was introduced either yesterday or at a
2 previous hearing. It's the same document.

3 Q] Okay. What is it?

4 A] It's dated September 24th, a memo to the file, 1993, uh,
5 where I had spoken to Mr. Misskelley, uh, via telephone and this
6 was, uh, the day that, uh, uh, things changed and our strategy
7 changed, and it would have been the same day that I spoke to Mr.
8 Wadley, and it was the same day, as that previous exhibit.

9 Q] Okay. 12R?

10 A] (Witness examining same.) This is a [sic] outline of our,
11 uh, defense.

12 Q] Could that have been in the file 24, the trial strategy
13 file?

14 A] Yes. That's where it originally was; obviously, it wasn't
15 in there the other day when it was pulled out and put in the
16 courtroom.

17 Q] Okay. We located it again in State's Exhibit #12, the big
18 file?

19 A] Yes, that's correct.

20 Q] And what is that, exactly?

21 A] Uh, an outline to who our alibi witnesses were and, uh, uh,
22 and also Mr. Lax had been asked to, uh, do some distances and
23 measurements for us to testify at trial, as well as take some
24 crime scene photos. Marty King, uh, was one of our witnesses;
25 he was the manager at, uh, the Bojangles restaurant, uh, where a

1 man had stumbled into the restaurant and the police officers had
2 lost the blood sample. And then Officer Allen was called, uh,
3 to talk about, uh, Mr. Misskelley approaching him and advised
4 him of someone named Tracy Laxton might have done the murders.
5 And then they talk about, uh, the interrogation. And then it
6 lists Dr. Wilkins and Mr. Misskelley himself. We were still
7 trying to decide whether or not to put him on the witness stand
8 at that time.

9 Q] I see?

10 A] His name is scratched through in this document, which means
11 we decided not to call him as a witness.

12 Q] I see. 12S?

13 A] (Witness examining same.) This is a memo to the file re-
14 garding a phone conversation I had with Dr. Peretti at the, uh,
15 Crime Lab about there not being any evidence of sodomy.

16 Q] That evidence being what?

17 A] Uh, I asked him, uh, about the sodomy and I'm assuming, I,
18 I'm, again, I'm assuming - - it's been a long time, but this was
19 probably done as a follow-up with what Mr. Wadley had provided
20 me or informed me on September 24th and, uh, there were some
21 injuries, uh, to Mr. Branch, uh, that I was interested in what
22 his testimony was going to be. Uh, and then he described, uh,
23 some superficial bite marks that were on the inside of victim
24 Byers' mouth, and which were caused by his own teeth. So I
25 assumed, I took that to mean that it was a compression wound and

1 he was either struck or hit in the face and the teeth inside his
2 mouth had caused the laceration in his mouth.

3 Q] Now this is way out of order, but it is in a chronological
4 sense. It's 12T, but if you would, just identify that?

5 A] (Witness examining same.) This is a memo dated September
6 2nd, '94...

7 Q] ...that's 1994?

8 A] 1994, so it would have been post-trial, uh, way post-trial.
9 And, uh, regarding a conversation I had with Mr. Misskelley at
10 the Department of Correction, uh, it doesn't say whether I
11 actually went down there or whether it was by telephone. And I
12 believe that I had gathered this information because Ms.
13 Hutcheson had approached Ron Lax, uh, about recanting her trial
14 testimony.

15 Q] I see. Okay. 12U?

16 A] (Witness examining same.) This is a memo to Mr. Crow and
17 myself from Ms. Krosp dated August 27, 1993 telling us that we
18 were supposed to meet with Mr. Davis the following day on 8/28,
19 uh, giving us directions to his office here in Jonesboro.

20 Q] Now is that the meeting of which you have no recollection?

21 A] It is. I have no memory of it whatsoever.

22 Q] In that regard, was that...

23 A] ...I certainly don't dispute that it happened. It
24 obviously did.

25 Q] And according to earlier questioning, was it not a meeting

1 for the purpose of the defense, you were laying out on the table
2 what Jessie could provide in the way of testimony?

3 A] We were, basically, they were relaying an offer to us and
4 were inquiring of us what we thought Mr. Misskelley would be
5 able to testify to. And the recording that followed, uh,
6 memorializes the offer being deferred back to Mr. Misskelley.

7 Q] So it's kind of a "what you got," I mean, you wanted to
8 know what they had in terms of what they could offer you, and
9 they wanted to know what you had in terms of what you were
10 offering?

11 A] It's been a long time since I listened to the tape, but I
12 think they actually made a specific offer, which we relayed to
13 Mr. Misskelley. I think that's what the tape reveals.

14 Q] Okay. So had you ever participated in a case that had this
15 dramatic a meeting occur on behalf of your client?

16 A] Well, as public defender, I had worked on several felony
17 cases, none of which had ever gone to jury trials. I had
18 negotiated a lot of pleas prior to that. Uh, I'm not sure I
19 understand exactly what you mean by "dramatic."

20 Q] Well, this was the first triple homicide involving eight-
21 year-old boys and involving three defendants who had diverse
22 defenses, and your man had given a confession. So I guess the
23 build-up was pretty, you know, I assume at that point you
24 thought that your client was in fact looking at the death
25 penalty; right?

1 A] We'd assumed that all along. Uh, you can probably count
2 the number of triple homicides involving children on one hand,
3 in that it had never occurred in the history of the universe.

4 Q] Probably had. So in that regard, you realized that at the
5 time that that was the case, that they weren't falling out of
6 the trees?

7 A] It was a significant case and a very complex case; yes,
8 sir.

9 Q] And this particular event sort of held the balance of what
10 would happen to Jessie Misskelley, did it not?

11 A] His fate was very much at stake; yes, sir.

12 Q] And I guess that's what I mean when I say that was "pretty
13 dramatic," wasn't it?

14 A] Apparently it wasn't dramatic enough that I can actually
15 recall going to Mr. Davis's office, but, uh, uh, it certainly
16 was what we had been working on, uh, from the very beginning up
17 until September 24th.

18 Q] Okay. Now after trial starts - - or no, I'm sorry - -
19 you've had the suppression hearing, you're geared up for trial
20 and I believe that you're about to start trial and at that
21 point, was an offer, another offer, relayed to the defense team
22 and Mr. Misskelley?

23 A] There was an offer; yes.

24 Q] If you would, describe that?

25 A] Uh, I can't recall whether or not the jury had actually

1 been sworn; it was real close to that. If it wasn't, we were
2 literally about to go into the courtroom and get started. It
3 seems to me that the jury had been chosen and were in the box
4 and, uh, we were about to go in and Mr. Calvin, uh, approached
5 us and said he wanted to visit with Mr. Crow and I and we went
6 back into, I think, the jury room, uh, in, in Corning.

7 Q] Okay. Well, let me ask you, that's a copy of the tran-
8 script of the trial record. Does it reflect what subsequently
9 happened - - is it talking about that particular offer? You
10 might want to scan a couple of those pages?

11 A] (Witness examining same.) I'm trying to find the context
12 of this. I think this may have been when Mr. Byers gave the
13 knife to the HBO folks. I see something about Mr. Fogleman
14 saying something about the knife and then we have a conference
15 in chambers. And there was some discussion about whether or not
16 Mr. Crow and I would be allowed to impeach the officers about,
17 uh, this particular piece of evidence.

18 Q] So is this the original offer?

19 A] Well, when I testified, I think it was back in September,
20 this is my sixteen-year-old recollection of the actual first
21 offer we ever got, but clearly, I was incorrect, because we did
22 received an offer in Brent Davis's office in August. So, uh, my
23 recollection is that Mr. Calvin came in as we were literally
24 starting the trial and, uh, made an offer. I don't remember
25 what the offer was, uh, according to the record here, it was

1 fifty years. And the Court inquired of Mr. Misskelley in
2 chambers, uh, asking him if, uh, we had discussed the plea offer
3 with him and he said yes and His Honor asked, uh, Mr. Misskelley
4 if he had in fact rejected the offer and Mr. Misskelley said yes
5 and then the judge asked what the offer was and Mr. Crow stated
6 fifty years.

7 Q] Now I'm not trying to deceive you or the Court on this
8 transcript and where this is. This is at a suppression hearing,
9 or is this at trial; we'll straighten that out.

10 A] My recollection is that it is literally as we were walking
11 in the courtroom to start the trial.

12 Q] Well, I know, but what I'm talking about is this fifty-year
13 time here is an offer that was in fact conveyed to your client,
14 but it was conveyed to your client prior to trial, but after the
15 September epiphany?

16 A] Yes. Yes.

17 Q] And at that point, does the record in there show, does it
18 indicate in there anything whereas you informed the Court that
19 you did not believe that your client could understand the offer?

20 A] There doesn't appear to be anything in there that I said,
21 but the Court specifically asked Mr. Misskelley if he wanted to
22 talk to his dad about it and the judge gave him an opportunity
23 to do just that. And there's a notation here that I had spoken
24 to Mr. Misskelley's father on 1164 in the record, that I told
25 Judge Burnett that the four of us could never sit down together

1 and His Honor said, "I want you to do that before we get
2 started."

3 Q] And when he says "get started," he's saying get started for
4 the trial?

5 A] The trial.

6 Q] The trial?

7 A] That's my recollection. But again, I haven't been able to
8 figure out the context of where we are, but I think - - my
9 memory is that it occurred exactly right instantaneously before
10 the trial started.

11 Q] Okay.

12 THE COURT: By the way, *The Democrat Gazette*
13 spelled "epiphany" correctly.

14 CROSS-EXAMINATION, continuing:

15 Q] If we could, uh, I'm not going to spend a lot of time on it
16 but I do want to get back to this.

17 A] I was afraid you were going to do that.

18 Q] Well, we've covered a lot of ground and I think that we're
19 at approximately at about page 27, but as I said, I think that
20 you have, you know, the billing record was prepared, I assume,
21 by you and Mr. Crow and by legal staff, but it was mainly input
22 of what you had done; you stood responsible for it?

23 A] As I recall, we had a little metal clipboard that had, uh,
24 carbonless time sheets where we would record our time, tear off
25 the sheets and give them to the secretary.

1 Q] Eight hours?

2 A] Yeah, something like that. And then it actually created
3 two copies of that record and, uh, and then they could be
4 reconciled with each other at the end of the month. And I don't
5 have any recollection of sitting down and preparing this myself.
6 I'm assuming that the secretary did, based on our time records
7 or time sheets.

8 Q] Right. That's why I wanted - - I know it's tedious - - but
9 I wanted to go through everything that you did in preparation of
10 this trial. We started December 12th and if you would, scan
11 through there because we've talked about most of the trial prep-
12 aration, we've talked about the different conferences that you
13 had on a regular basis with your client, with your client's
14 father and family, orders and pleadings that you drafted and
15 we've also talked about the experts that you consulted with.
16 The defense counsel for other defendants, many of those things
17 are contained on page 27, aren't they?

18 A] Yes, sir.

19 Q] On page 28, while we weren't able to locate it, it does say
20 that there was a transcription of the taped interview between
21 Dr. Ofshe and your client, and that's the one I believe we have
22 the tape of; is that correct?

23 A] Yes, sir. I thought there was a transcript of it, but it
24 may have been one that you prepared. I don't know.

25 Q] We have one that we prepared, but I never saw one in the

1 file. I'm not saying you didn't prepare one; I just didn't
2 locate it. And, you know, Dr. Ofshe may have possibly done that
3 as it may have been for his use.

4 A] It's possible.

5 Q] There's travel during the time period of 12/18 to 12/22;
6 uh, phone conference with Dr. Ofshe again; conference with Crow;
7 there's a hearing...

8 MR. ROSENZWEIG: What page are you on?

9 MR. HOLT: 28.

10 CROSS-EXAMINATION, continuing:

11 Q] And as I just flip through, on page 30 there is another
12 conference with Dr. Ofshe; there's a phone conference on
13 December 29th with Ron Lax and Dr. Wilkins. Briefly, do you
14 recall what that is about?

15 A] It appears to be regarding the suppression and motion in
16 liminie.

17 Q] So those are connected, do you think?

18 A] I think so; yes, sir. It's hard to say for sure, but based
19 on my notations up here, that appears to be what it's about.

20 Q] And at this point, too, on December 30th it says there is a
21 phone conference with Ron Lax. We've admitted into evidence the
22 big file that has some documentation where you were at that
23 point directing Mr. Lax to, he was doing leg-work for you, for
24 lack of a better term?

25 A] We needed some help because we were running out of time and

1 we made a motion for a continuance, which had been denied by the
2 Court, and we were desperately trying to find some witnesses
3 that we couldn't find on our own.

4 Q] Okay. Page 31, December 30th through the 3rd of January,
5 trial preparation; travel; reviewing documents; research, is
6 that consistent with your memory of that time leading up to
7 trial?

8 A] Yes, sir.

9 Q] Page 32, January 3rd through the 8th there appears to be
10 travel to West Memphis; interview of witnesses; review findings
11 of an investigator. I assume that would be Mr. Lax?

12 A] Yes, sir, that would be correct.

13 Q] Okay. You drafted pleadings; you discussed the case with
14 various defense attorneys; you discussed the case with Dr.
15 Wilkins; and you had a conference with your client that week.
16 Is that consistent with your memory of preparation leading up to
17 trial?

18 A] Yes, sir, this is the best record that tells exactly what
19 we did.

20 Q] Page 33, January 8th, '94 through January 13th, '94, I guess
21 I could say "ditto" as it seems to be about the same. And it
22 seems to be that, for instance, on the 12th, trial preparation,
23 we're now seeing figures like 17.25 hours on one particular day,
24 which indicates that both you and Mr. Crow were working on the
25 case?

1 A] By that time we were both fully engaged in everything that
2 was going on.

3 Q] Okay. Page 34, continued trial preparation, it appears to
4 be both you and Mr. Crow working through the week of January 14th
5 through January 19th and there is a conference with Dr. Berry, I
6 believe you indicated he was a jury consultant?

7 A] Yes, uh, that was the year there was no Christmas and I
8 didn't remember the guy's name, uh, until I just saw it here on
9 page 34, but it was Dr. Berry and I believe his consulting
10 practice was at Little Rock.

11 Q] All right. Page 35, January 19 through January 24th, trial
12 preparation; there appears to be during that time a court
13 appearance that involved jury selection in Corning. So was the
14 jury selection separate and apart at the time from the trial, or
15 were they continuous?

16 A] Well, they happened at the same time, uh, I mean, we
17 started the trial process, the jury selection, based on this,
18 based on January 20th and then, uh, it was interrupted by the
19 knife that was sent off to be evaluated.

20 Q] I see.

21 A] And I think there was a delay of the actual trial in-
22 between voir dire and the trial actually starting while we were
23 waiting for the lab results to come back.

24 Q] I see. And then during that time it says trial prepa-
25 ration; so you were still preparing for trial?

1 A] Yes, sir.

2 Q] And that deals with page 35 and was through January 24th.
3 Page 36, January 24th through the 28th of January, which was the
4 third day of the trial?

5 A] Yes, sir.

6 Q] And obviously, you were present. Page 38 is January 31st
7 through the 3rd of February and that is also over the course of
8 the trial?

9 A] It looks like I've been on the witness stand longer than
10 the trial lasted.

11 Q] Perhaps. Perhaps, but we did a lot of work. Page 39,
12 February 3rd through February 13th, this is the time period that
13 encompasses the, well, travel to Pine Bluff, for example. This
14 is travel to Pine Bluff and that corresponds with the February
15 8th interview with Mr. Misskelley?

16 A] Yes, sir.

17 Q] I won't belabor that anymore. We've gone over it enough.
18 Now you did, it does appear that after Mr. Misskelley gave you
19 that interview on February 8th that you did have a phone confer-
20 ence with Dr. Ofshe on the 13th?

21 A] The record reflects that I did; yes, sir. I don't have any
22 independent recollection of that, but it certainly shows that I
23 did.

24 Q] Okay. Do you have any recollection of consulting with Dr.
25 Ofshe after any of these other statements or encounters that Mr.

1 Misskelley had, post-conviction?

2 A] No, sir, I don't.

3 Q] Okay. So we know that Dr. Ofshe is - - well, let's
4 continue. Page 40, February 14th through February 16th there is
5 some time, I mean, if I look at that in the ball park, there may
6 be half a dozen hours of work at this point in those two days,
7 perhaps maybe a little bit less, but just generally, phone
8 conferences and you reviewed an autopsy. Well, I stand
9 corrected. On 2/15 in fact that was the other conference with
10 client and it was taped?

11 A] I believe that's correct; yes, sir. It was the day after
12 Valentine's Day.

13 Q] And it was prior to the statement that was given by Mr.
14 Misskelley in Joe Calvin's office; is that right?

15 A] Two days before.

16 Q] Two days? I'm sorry. Two days before. Page 41 February
17 16th through February 21st there is on the 16th it indicates there
18 is a phone call from the client; and then on the 17th there was a
19 conference with the client and also conference with attorneys
20 Davis and Calvin. The 17th entry corresponds with that
21 statement; is that correct?

22 A] That's correct.

23 Q] Now on February 18th conference with attorney Wadley; phone
24 conference with attorney Ford; conference with attorney Price
25 and Davidson; travel to West Memphis; conference with Jessie,

1 Sr., and Dr. Ofshe. Does that ring a bell on anything?

2 A] I have no recollection of that, but apparently I did.

3 Q] Do you know if you provided him with any - - did you make
4 any copies - - let me back up. You have described the process
5 by which you would, I believe, transfer tapes that you made,
6 audio tapes, that you had a machine that would make a little
7 cassette into a big cassette, or vice versa?

8 A] Back then all we had was the headset micro and a foot pad
9 thing that the secretary just transcribed.

10 Q] Well, my question is, do you have any recollection or would
11 you have provided Dr. Ofshe with a tape at any of those inter-
12 views that you had with Mr. Misskelley personally?

13 A] I honestly don't remember meeting with Dr. Ofshe post-
14 conviction. It's a complete mystery to me.

15 Q] Okay.

16 A] My assumption would be that he probably just happened to be
17 in Memphis that day flying from one spot to the other and, uh, I
18 might have had lunch with him or something. I don't know. I'm
19 just guessing.

20 Q] I see. Page 42, February 21st through March 1st, you are in
21 fact, you're meeting with your client on several different
22 occasions. On the 22nd, on the 23rd, along with attorney Phillip
23 Wells and then there is a meeting with your client on 2/28 and a
24 meeting with your client on March 1st?

25 A] Yes, sir.

1 Q] Is that consistent with what occurred during that time?

2 A] Based on all of the tapes that I have listened to recently,
3 yes, it is.

4 Q] Page 43, there is March 2nd through the 4th and a court
5 appearance on and drafting motion for a new trial; attending the
6 Jonesboro trial. I guess that would have been the Echols/Bald-
7 win trial?

8 A] Yes.

9 Q] And then a trip and a phone conference with Ron Lax for
10 fifteen minutes?

11 A] Yes, sir.

12 Q] Okay. And below that there are, uh, I assume that these
13 are reimbursements paid from monies, expense money and on the
14 16th of June it says "magazines, eighteen dollars." Were those
15 magazines that you provided to Mr. Misskelley?

16 A] I'm assuming so; yes, sir.

17 Q] Okay?

18 A] It appears that just looking at this now, it appears that I
19 remember now, we had a DOS based, uh, billing program that we
20 would supply those carbonless sheets to the secretary and she
21 would put it in the computer and, uh, that's why it's printed
22 out that one hundred dollars per hour, because that was our rate
23 at the time and that's why the computer did the calculations and
24 apparently we had money in our trust account for Mr. Misskelley
25 and these reimbursements apparently are for that.

1 Q] Do you recall if you had any money - - were you fronted any
2 money for out-of-pocket expenses?

3 A] Not by the Court.

4 Q] By somebody?

5 A] Uh, the Misskelley family, uh, I was paid money as I
6 testified yesterday by HBO as were all of the victims' families.

7 A] I see.

8 Q] And, uh, they decided to use that money to offset expenses.
9 I believe that we actually paid for Mr. Holmes and Dr. Ofshe's
10 flights twice to testify. Let's see what it says here.

11 (Pause.)

12 Q] I don't need to know that.

13 A] Okay. I haven't seen this document in probably ten years.
14 I'm guessing.

15 Q] That's why I wanted to go through it. Attached to it are
16 some invoices from other firms that assisted you in this trial.
17 I believe there is a Dr. Berry with the jury consultation, they
18 submitted an invoice; Dr. Ofshe submitted an invoice, and he
19 lists on his invoice - - it's located at the back of the exhibit
20 - - he lists four trips and two in January, but the trip number
21 four, would that have been to attend the trial, or do you know?

22 A] He came once to interview Mr. Misskelley, he came a second
23 time to meet with the police officers in West Memphis and they
24 refused to meet with us, uh, and he came for the suppression
25 hearing which was held I believe in January right before the

1 trial started and then he came the fourth time to testify at the
2 trial.

3 Q] Okay. And you reviewed this invoice and it appears to be,
4 I mean, at the time of submission you reviewed this invoice and
5 submitted it?

6 A] I'm sure I did. I obviously submitted it; yes, sir.

7 Q] Okay. And then William E. Wilkins submitted a statement of
8 his participation in the case, and I'm assuming that you
9 reviewed that statement and submitted it?

10 A] Yes, sir.

11 Q] Holmes Polygraph Service and he did transportation costs
12 and then you received an invoice from him and you submitted that
13 or I don't know if it was part of something that was paid. I'm
14 just saying that you did submit it and review it?

15 A] Mr. Holmes paid his own expenses, I recall now. And I
16 believe that he was the only expert that His Honor reimbursed,
17 uh, in full. I may be wrong about that; that's my recollection.
18 And Dr. Ofshe paid his travel expenses, but I believe he paid
19 the hotel expenses at the airport in Memphis at the Hilton, or I
20 can't remember. It's the one right by the airport. He paid for
21 the room.

22 Q] Okay.

23 A] I remember these are my room cards for that, I think.

24 Q] Subsequent to this case - - that's all I'm going to ask
25 about that.

1 A] Okay. Good.

2 Q] Subsequent to the trial, did you maintain contact with Dr.
3 Ofshe?

4 A] For several years. I think I also remained in contact, I
5 maintained contact with his associate, Dr. Richard Leo.

6 Q] I show you what's been marked as State's Exhibit #8 and ask
7 if you can identify that?

8 A] (Witness examining same.) This is a letter from Dr. Leo,
9 as I stated just seconds ago.

10 Q] Now who was Dr. Leo, exactly?

11 A] He is a, uh, apparently he is not a Ph.D., uh, he is a
12 professor of criminology and psychology who has done work with
13 Richard Ofshe and also Dr. Gudjonsson in Iceland about false
14 confessions.

15 Q] And this is the person who has written on suggestibility?

16 A] Dr. Gudjonsson?

17 Q] Yes?

18 A] Yes. And I think this is probably an article that was
19 published by Dr. Leo that he sent me a copy of. It looks like
20 Dr. Ofshe and Dr. Leo prepared this and were kind enough to send
21 me a copy of it.

22 Q] Well, in that letter, they indicate that you somehow
23 participated or that you contributed it in some way?

24 A] I think I provided them with, uh, a copy of the confession
25 and a timeline, uh, and it looks like they're returning those

1 documents to me.

2 Q] Did they also include an article that was from a scholar
3 who had an opposing viewpoint to Mr. Leo and Dr. Ofshe?

4 A] I'm not sure that I would refer to him as a "scholar," but,
5 but, uh, he definitely had opposing viewpoints.

6 Q] Okay. And what would his name be?

7 A] Paul Cassell.

8 Q] And where did Professor Cassell's writing appear?

9 A] Where did it appear at?

10 Q] Yes, in what publication?

11 A] I think it was a law review article from Utah.

12 Q] Well, I believe the letter says that they had enclosed a
13 copy of Professor Cassell's article?

14 A] I haven't got that deep, yet.

15 Q] Okay. Keep digging.

16 (Pause.)

17 A] It looks like it was published in the *Harvard Journal of*
18 *Law and Public Policy*.

19 Q] Okay?

20 A] He is from Utah. That's why I remembered Utah.

21 Q] I see.

22 MR. HOLT: Your Honor, we would move for
23 introduction of that exhibit.

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

25 MR. ROSENZWEIG: Your Honor?

1 THE COURT: Yes, sir?

2 MR. ROSENZWEIG: He's authenticated the letters
3 that were sent to him. I'm not sure of the relevance
4 of the articles that someone sent him in the mail. I
5 mean, he did receive it; there's no question about
6 that, but to the extent that it is being considered as
7 some way dispositive in this case the fact that some-
8 one sent him a law review article...

9 THE WITNESS: ...it's 1999.

10 MR. HOLT: Well, what it goes to, Your Honor, is
11 he confirmed that he had had some correspondence with
12 them even at that particular time, and not only that,
13 but that the letter references his correspondence with
14 them.

15 The fact that it occurred in 1999 post-trial
16 versus - - it's versus pre-trial - - that part is
17 irrelevant, any objection to that, because Mr. Stidham
18 is on the stand now and his credibility is being
19 measured now. And it happened prior to now.

20 MR. ROSENZWEIG: Well, I, I understand that, Your
21 Honor. I, I understand that, you know, that the State
22 is entitled to utilize it for bias and prejudice and
23 all of the other issues there.

24 What I'm saying is I don't see how the fact that
25 Mr. Stidham received an article or, or what the

1 contents of the article that were written by someone
2 else and mailed to him, uh, goes, uh, what relevance
3 that has to Mr. Stidham's bias, prejudice, uh,
4 credibility, whatever.

5 MR. HOLT: It was received in response to him
6 writing them and sending them material.

7 MR. ROSENZWEIG: Yeah. Well, that's fine. So
8 they send him an article. That's fine. They sent him
9 an article. But I mean, if my, I mean, I don't care
10 if it litters up the record.

11 All I'm saying is that - - on the record is our
12 position is that it is of no moment and is irrelevant
13 to the issue, uh, to the specific issues what, what
14 some article that Mr. Stidham didn't write and someone
15 else sent him, uh, has to do with anything that Mr.
16 Stidham...

17 THE COURT: ...well, aren't we talking about his
18 diligence and his ability and his interest in
19 representing his client? Isn't that what it's all
20 about?

21 MR. ROSENZWEIG: Yes, but we're talking...

22 THE COURT: ...it's certainly relevant in that
23 regard.

24 MR. ROSENZWEIG: Well, I understand, but an
25 article that is written years later and sent to him

1 years later?

2 THE COURT: Well, I'm not so much concerned about
3 the content of the article; just the fact that he
4 solicited and obtained the article shows his diligence
5 and competency, and I'm going to receive it for that
6 limited purpose.

7 MR. ROSENZWEIG: Well, Your Honor, I mean, the
8 issue in a Rule 37 is Mr. Stidham's diligence and
9 competency during the period of the time of the trial.

10 MR. HOLT: But Mr. Rosenzweig has already
11 conceded that his credibility is on trial up until
12 this day.

13 THE COURT: I think he also handled the direct
14 appeal, too, which his competency in that regard would
15 be...

16 MR. ROSENZWEIG: ...that is correct, Your Honor.
17 But that again was decided in what? '96? So, I
18 mean...

19 THE WITNESS: ...the decision came down in 1996.

20 THE COURT: Well, while I'm not receiving it for
21 the content of the article, I am going to receive it
22 to show his zeal in representing his client and his
23 interest in representing his client, and it goes to
24 his credibility.

25 MR. ROSENZWEIG: It's only for that purpose?

1 THE COURT: For that limited purpose.

2 MR. ROSENZWEIG: Okay.

3 (WHEREUPON, State's Exhibit #8 was admitted and received into
4 evidence and is appended on page .)

5 CROSS-EXAMINATION, continuing:

6 Q] Just one or two questions. Did you ever read Mr. Cassell's
7 article?

8 A] I did ten years ago.

9 Q] You're sure of that?

10 A] I think so. I mean, I'm not sure what I had for breakfast
11 yesterday, but I'm pretty sure that I read this. They sent it
12 to me.

13 Q] Well, what you had for breakfast yesterday isn't a very
14 dramatic...

15 A] ...actually, it was oatmeal.

16 Q] Okay. So you do remember?

17 A] With blueberries on top.

18 Q] It was more dramatic maybe than some things?

19 A] This was not particularly dramatic to me with regard to Mr.
20 Misskelley's case in the sense that it was, as I recall, again,
21 it's a ten-year-old document, but it's a debate between what you
22 describe as scholars, uh, over whether or not the phenomena of
23 false confessions actually exist. I think that the consensus
24 now in 2009 is that it is a very real phenomena. In 1993, uh,
25 uh, Judge Burnett wasn't impressed with this phenomena, nor was

1 the Arkansas Supreme Court.

2 Q] And it's your contention that in 2009 that it is a debate,
3 that's no longer taking place?

4 A] Well, Counselor, the FBI has changed their...

5 Q] ...I'm just asking you a "yes" or "no" question?

6 A] I'm trying to answer and your question, and you won't let
7 me.

8 MR. ROSENZWEIG: Your Honor...

9 CROSS-EXAMINATION, continuing:

10 Q] "Yes," or "no," does that debate still take place?

11 THE COURT: Answer "yes" or "no," and then if you
12 feel the need to explain, go ahead.

13 CROSS-EXAMINATION, continuing:

14 A] Is the debate still...

15 Q] ...is that debate still taking place?

16 A] Among some people, yes.

17 THE COURT: Now if you want to amplify your
18 answer, go ahead.

19 THE WITNESS: Thank you, Your Honor.

20 CROSS-EXAMINATION, continuing:

21 A] Uh, recently, uh, and when I lecture, uh, at universities
22 around the country, this very issue, uh, comes up and...

23 Q] ...now you do not lecture as an expert, though, do you?

24 A] The only expertise I have is I happen to be on the ground
25 for the last sixteen years in this case. Uh, that's the only

1 expertise I have.

2 Q] I see?

3 A] I don't hold myself out to be an expert in anything, uh,
4 other than, uh, I know of what I've done in this case and one of
5 the things that I lecture on is false confessions. I lecture at
6 Arkansas State University on that, and as a matter of fact, that
7 was the subject of my lecture last Tuesday night.

8 Q] Do you present an opposing viewpoint?

9 A] Uh, I...

10 Q] ...for instance, do you incorporate Mr. Cassell's materials
11 in your lecture?

12 A] No, because Mr. Cassell's viewpoint is not generally
13 accepted in the field now, uh, as evidenced by the fact that
14 most prosecutors in the United States and, uh, even the FBI, has
15 changed their interrogation tactics, uh, and are now video
16 taping confessions in major felony cases, uh, from beginning to
17 end. Uh, back in 1993 only Minnesota and Alaska were states
18 that did this; now there's like sixteen or seventeen states that
19 require it. And that's why I lecture, uh, because I want to see
20 all fifty states require that.

21 Q] Okay?

22 A] The old police handbook and textbook on interrogations has
23 been tossed out and replaced with a new one. Would you like me
24 to put this back in this envelope?

25 Q] Yes, if you would. I show you what's been marked as

1 State's Exhibit #9 and it says "file number 38," and ask if you
2 can identify that?

3 A] (Witness examining same.) It appears to be a portion of my
4 file.

5 Q] What does it contain?

6 A] It says "Jim Morgan correspondence."

7 Q] Okay?

8 A] But I don't have any recollection of who he is.

9 Q] Is it possible that he is a, or was a feature writer for
10 *The Arkansas Times*?

11 A] Oh, yes, I do remember him now. I think he wrote the, uh,
12 the piece that was in *The Arkansas Times* on, on, uh, back in '96
13 right after the appeal handed down.

14 Q] And I believe it is one of the articles that appears on
15 your website, is it not?

16 A] Yes.

17 Q] If you would, do you recognize the May 8th, 1996 facts that
18 you sent to Mr. Morgan?

19 A] I don't see any on May 8th. There's a May 9th fax cover
20 sheet.

21 Q] Well, does the May 9th fax cover sheet, the second page, via
22 fax, May 8, 1996?

23 A] Yes, I see it.

24 Q] If you would, that second paragraph from the bottom, did
25 you write that?

1 A] (Witness examining same.) It appears that I did.

2 Q] It says here "the interrogation of Misskelley on June 3rd,
3 1993 lasted from 9:00 a.m. until approximately 9:00 p.m. The
4 taped part of the interrogation began at 2:44 p.m. and lasted
5 until 3:18 p.m., twenty-four minutes. The second part of the
6 taped interrogation was done to clarify the obvious and incor-
7 rect parts of Jessie's ridiculous story wasn't even documented
8 time-wise but it lasted approximately twelve minutes." Mr.
9 Misskelley - - there has been no testimony in this case, and no
10 notes to reflect that Mr. Misskelley - - in your file, or
11 otherwise, that Mr. Misskelley was interrogated, that his
12 interrogation lasted from 9:00 a.m. until approximately 9:00
13 p.m., is there?

14 A] I think there is.

15 Q] You do? Where is it?

16 A] He was picked up, and again, I use the word "approximate-
17 ly," uh, at 9:00 a.m.

18 Q] Well, "approximately" given three or four hours?

19 MR. ROSENZWEIG: Your Honor, let him answer the
20 question. He hasn't processed his answer.

21 CROSS-EXAMINATION, continuing:

22 A] Uh, I have maintained since day one that the interrogation
23 had always been approximately twelve hours. I think I testified
24 to that several times since this started back in September.
25 And, uh, if you want to take out the times that, uh, we don't

1 know what happened when the officers were talking to him, the
2 time that they were driving around town looking for his father
3 to get him to sign the polygraph release, even though they
4 didn't think it was important to get a Miranda release from his
5 father, you can take all of that time out.

6 Q] Well, Mr. Stidham, the record will speak for itself. You
7 have explained the things that you think happened during that
8 time, but there's been nothing in this hearing except you just
9 saying it. There's been no documentation in your file, or
10 otherwise that in fact, your file has notes where you have said,
11 you would take them down, that "daddy said they came by Vicky's
12 about 9:30." And they also had to go back, did they not, and
13 get a polygraph release form from Jessie, Sr.?

14 A] I just said that.

15 MR. ROSENZWEIG: Your Honor, I would object to
16 the form of that question. That's Mr. Holt
17 testifying.

18 MR. HOLT: This is cross, Your Honor.

19 MR. ROSENZWEIG: I know, but still...

20 THE COURT: ...avoid arguing with the witness.

21 MR. HOLT: Okay.

22 THE COURT: Go ahead.

23 CROSS-EXAMINATION, continuing:

24 Q] Earlier in your testimony, Mr. Stidham, you agreed with the
25 facts set out by the Supreme Court that said "Off and on over a

1 period from 10:00 a.m. until 2:30 p.m. was questioning. At 2:44
2 p.m. there was a statement, and again at approximately 5:00
3 p.m." And you also looked at a copy of the record from the
4 suppression hearing and said those were approximately the right
5 times. That is not 9:00 a.m. to 9:00 p.m. is it?

6 A] But the key word is approximate.

7 Q] Approximately, give or take two or three hours?

8 A] Mr. Misskelley told me that when they got done with the
9 last tape that it was getting dark outside, which at that time
10 of the year in 1993 was about nine o'clock. And for some
11 reason, uh, apparently this wasn't dramatic enough for the West
12 Memphis police department to even put the time on the tape, so
13 we don't know what time it was.

14 Q] But the day that you were doing a plea negotiation where
15 Jessie Misskelley's life was held in a balance, wasn't dramatic
16 enough for you to remember the details of it, was it?

17 A] Well, that's why I recorded the conversation so that, uh, I
18 could remember it some day if called upon to do so.

19 MR. HOLT: That's all I have, Your Honor. Oh, we
20 will introduce the transcripts - - I've rested, with
21 regard to cross-examination on him for now, with that
22 same stipulation that we did with Mr. Crow.

23 THE COURT: All right. Do y'all have a
24 stipulation on the introduction of an exhibit or
25 statement or recording?

1 MR. ROSENZWEIG: If I could have a minute to talk
2 to Mr. Holt to make sure we're on the same page.

3 THE COURT: Okay.

4 (Pause.)

5 THE COURT: Did you have any cross of him?

6 MR. ROSENZWEIG: It will be re-direct.

7 THE COURT: Re-direct, I mean.

8 MR. ROSENZWEIG: Yes, I will have that.

9 CROSS-EXAMINATION, continuing:

10 Q] I show you what's been marked as State's Exhibit #10?

11 A] (Witness examining same.) This is a transcript of the
12 interview with my client with Richard Ofshe, back on December
13 15th of '93.

14 MR. HOLT: We would move to introduce this,
15 subject for correction to any stipulations.

16 MR. ROSENZWEIG: Well, I think we're in a process
17 of making sure all of these are accurate, if I could
18 voir dire on that issue, we could resolve this.

19 THE COURT: All right, go ahead.

20 VOIR DIRE EXAMINATION

21 BY MR. ROSENZWEIG:

22 Q] Do you remember having such a conversation at that time?

23 A] Yes.

24 Q] Okay. In other words, that was reported by you?

25 A] Yes, and this appears to be a transcript of that. I've

1 read part of this yesterday; I didn't get through all of it
2 during the ten-minute recess, but, uh, I haven't compared it to
3 the actual tape, but it appears to be accurate.

4 THE COURT: Well, subject to it being compared
5 for transcription errors, it may be received by
6 agreement.

7 MR. ROSENZWEIG: That's fine. Yes, sir. I just
8 wanted the record to reflect that in fact he does
9 recollect that, whatever.

10 THE COURT: Okay.

11 MR. HOLT: We're good with that.

12 THE COURT: All right.

13 (WHEREUPON, State's Exhibit #10 was admitted and received into
14 evidence and is appended on page .)

15 THE COURT: Do you want to take a lunch recess
16 right now?

17 MR. ROSENZWEIG: I can go on right now.

18 THE COURT: All right.

19 MR. HOLT: Okay.

20 RE-DIRECT EXAMINATION

21 BY MR. ROSENZWEIG:

22 Q] Was there a time that you and Mr. Lax had a conversation
23 with Mr. Misskelley?

24 A] Yes, sir.

25 Q] Okay. And was that the conversation that back in last

1 November you were going through your vault or whatever it was
2 and located that tape?

3 A] Yes, as I was preparing and reviewing transcripts, uh, I
4 suddenly thought to remember to look in my vault and, uh, I un-
5 covered that tape.

6 Q] Okay. And it's been transferred from whatever reading that
7 was to a, uh, CD?

8 A] Can I see that, please? (Witness examining same.) Yes.

9 Q] And again, it has not been fully transcribed yet, but you
10 would agree that there was such a tape made.

11 A] I'm very much familiar with it; yes.

12 Q] And subject to appropriate correction, or whatever...

13 A] ...I was the one that actually converted it from the little
14 microcassette.

15 Q] You did the conversation?

16 A] Yes.

17 MR. ROSENZWEIG: Whatever our next number is, I
18 would move for the introduction.

19 THE COURT: All right, it may be received without
20 objection. Are you going to substitute a transcript
21 for the disc?

22 MR. ROSENZWEIG: And a transcript and the disc.

23 THE COURT: We'll receive the disc and a trans-
24 cript.

25 MR. HOLT: Is that the only one that you have?

1 MR. ROSENZWEIG: It's the only one I have but I
2 think Ms. Pemberton has one, because she sent this one
3 to me, so I assume that she has another copy.

4 THE WITNESS: I think I gave a copy to Brent in
5 November.

6 THE COURT: She's a lawyer.

7 MR. ROSENZWEIG: She is a lawyer and is a member
8 of the California bar. She operates more as an
9 investigator than as a lawyer, but she is a member of
10 the bar in California.

11 And this is number 49 and I anticipate that we
12 can make the transcript 49A.

13 THE COURT: That will be fine.

14 (WHEREUPON, Petitioner's Exhibit #49 was admitted and received
15 into evidence and is appended on page .)

16 RE-DIRECT EXAMINATION, continuing:

17 Q] And although further cross-examination is of course
18 reserved on that point, let me ask you a few questions about
19 that interview with Mr. Lax. What was the reason for that
20 session?

21 A] Again, I had forgotten that I had it, but after I listened
22 to it, uh, it was on the eve of, uh, the second trial happening
23 here in Jonesboro, the trial of Baldwin and Echols. And, uh,
24 Mr. Lax and I had went down to visit with Mr. Misskelley because
25 the Craighead County sheriff and the Clay County sheriff and the

1 prosecutors were still constantly barraging Mr. Misskelley...

2 Q] ...when you say you "went down," where did you travel to?

3 A] We went to Pine Bluff at the Diagnostic Center.

4 Q] The prison?

5 A] Yes.

6 Q] Okay. And so you took Mr. Lax for what reason?

7 A] I think he met me there.

8 Q] For, for what reason?

9 A] Uh, to be honest with you, I don't know. I don't remember
10 what my purpose or intent was. I think, uh, obviously the law-
11 yers for Mr. Baldwin and Mr. Echols were concerned about whether
12 or not Mr. Misskelley was going to testify.

13 Q] Mr. Lax was actually working for them, at least for Mr.
14 Echols' lawyers; right?

15 A] Yes, he was officially their investigator. Yes, sir.

16 Q] And what did you take away; what conclusion did you draw
17 from that session?

18 A] Uh, that Mr. Misskelley, uh, was not there, had nothing to
19 do with the crimes and didn't see the other folks, uh, the other
20 co-defendants there; he said he didn't know whether they were
21 guilty or not.

22 Q] Did you form any conclusions as to whether Mr. Misskelley
23 continued to be malleable or manipulatable [sic] as part of that
24 conversation?

25 A] Very much so. Uh, Mr. Lax and I both talked to him about

1 the dangers of him discussing the case with anyone, and there
2 was actually one part of the tape where Mr. Lax was role playing
3 and, uh, within less than a minute, he got Mr. Misskelley to
4 start talking about the case, uh, uh, even basically tricked him
5 into it.

6 Q] And was Mr. Misskelley also having a problem of doing the
7 narrative?

8 A] He's always had that problem.

9 Q] Now at the risk of belaboring the point, the, uh, basically
10 to summarize, uh, you had assumed from, from the time of your
11 appointment throughout most of that summer of 1993 that you were
12 working on a plea?

13 A] That's correct; yes, sir.

14 Q] And then events occurred in the late summer of 1993
15 involving the T-shirt and other events, and you realized that
16 Mr. Misskelley was innocent?

17 A] That's correct; yes, sir.

18 Q] And you changed strategy completely?

19 A] Completely; yes, sir.

20 Q] And, uh, you have not changed your conclusion in any way
21 since that time; is that correct?

22 A] No, sir. There was a lot of back and forth. Mr. Miss-
23 kelley had during those two weeks between, uh, the trials where
24 he was continuously being barraged by the officers, uh, who I
25 had asked not to talk to him, uh, but did anyway. And depending

1 on what day it was and who was talking to him, he would pretty
2 much tell you whatever you wanted to hear.

3 Q] And you regarded that not as evidence of guilt, but
4 evidence of his ability of being manipulated?

5 A] Exactly. And that's why I reported to the Court, uh, on
6 the February 17th tape that was conducted at Mr. Calvin's office
7 that in my opinion, Mr. Misskelley was committing perjury. And
8 as I recall, Mr. Crow concurred in that opinion.

9 Q] Now at one point there was, uh, there was talking about
10 shoestrings and ropes and whatever. Could you describe how, how
11 the fact that there was the reference of shoestrings versus the
12 reference to rope and demonstrated his manipulatability?

13 A] Sure. His first statement to the police on June 3, 1993, he
14 described the ligatures, uh, that bound the victims as a big
15 brown rope. And the officers just, you could tell from the
16 audio of the tape, they were shocked by that but they just kind
17 of glossed over it and kept going. And, uh, later on, uh, Mr.
18 Misskelley, uh, during this time period that he was talked to,
19 uh, by the officers, uh, I think was in violation of his 6th
20 Amendment right to counsel. He, uh, he said on, uh, February
21 15th "I wasn't there," and then at Joe Calvin's office on
22 February 17th, 1994 he said he told the police about the brown
23 rope just to throw them off, uh, and then on March 3rd he said he
24 wasn't there and then again on this last tape that we were talk-
25 ing about he said he wasn't there. So he constantly went back

1 and forth on that issue.

2 Q] And in fact, he contradicted himself on a number of other
3 issues, didn't he?

4 A] He did; many issues.

5 Q] Such as, uh, we were talking about in those interviews or
6 sessions where he was saying he had something to do with it?

7 A] That's correct. The first statement that he gave the
8 police he, uh, described, uh, his role as a witness and he told
9 the police during that June 3rd, 1993 interview that he left the
10 crime scene seven different times. And the police kept saying,
11 "well, after you came back what did you see?" And then Mr.
12 Misskelley would answer more multiple choice questions or, or
13 repeat what the officers had told him. And, uh, by then
14 probably the only narrative that he ever provided was that he
15 stated to the police that he held the victim Moore while Damien
16 and Jason committed the murders on the other two boys. And then
17 that changed again, depending on which, uh, uh, person was
18 talking to him and, uh, and the dates. But, uh, he told, uh,
19 after he was granted immunity, use immunity by the court, uh,
20 February 17th, his version changed where now he is a participant
21 in, uh, hitting the kids, uh, and then at one point he says he
22 didn't help tie them up and then another occasion he said he
23 pulled shoe laces out of their shoes to give them, so he was
24 just all over the map on that particular issue.

25 Q] And he was, he was all over the map on a number of other

1 issues, as well?

2 A] That's very much so; yes. Uh, the issue regarding the
3 dogs, uh, on June 3rd he told the police officers about this,
4 what he referred to as "the cult," uh, talked about skinning
5 dogs and eating dogs, uh, later on, uh, uh, he said on February
6 8th, when I was at the Department of Corrections interviewing
7 him, uh, with prosecutors Fogleman and Davis outside the room,
8 he said, "I made all of that stuff up about eating dogs." And
9 then on 2/15/94 he said, "I wasn't there." Uh, another example
10 would be, uh, on June 3rd he said he saw Jason, uh, cut the penis
11 off of one of the victims, uh, later on he says on February 17th
12 at Joe Calvin's office, "I didn't see Jason cut the penis off."
13 Uh, and then on 2/15 and again on 3/2, he says, "I wasn't
14 there." So back and forth on that issue, as well.

15 Q]. And also, he was back and forth on the issue of where,
16 where - - how deep the water was; correct?

17 A] That's how I knew for sure that Mr. Misskelley was perjuring
18 himself because on February 8th when I was down, uh, at Pine
19 Bluff, uh, after he had been badgered all the way from Piggott
20 to the Pine Bluff Diagnostic Center by the officers, who I
21 specifically asked not to talk to him because he was represented
22 by counsel, he, uh, I showed him a crime scene, which is Exhibit
23 43, I don't know that - - I think it's Petitioner's 43 - - this
24 is an exhibit, uh, that I actually went outside of the room and
25 asked the prosecutors to call the police and have them fax to us

1 at the Pine Bluff, uh, correction center and, uh, this is the
2 original document, uh, and it's one of those onion skin faxes
3 that shows that it came from the West Memphis police department
4 on February 8, 1994 at 17:33 hours. And what they had done, uh,
5 or what we had done, is white-ed out where the bodies were on
6 this crime scene map and when I handed this to Mr. Misskelley,
7 his words were, "That ain't right; that don't look right to me."
8 And he said something about there not being a wheat field, uh,
9 he says there wasn't a pond and he says, uh, uh, there's some-
10 thing, he kept describing something about a National Guard
11 building. But I, I don't even know of a National Guard building
12 in that area. Uh, then I specifically asked him to, to point
13 where the bodies were with the green marker, and this is the
14 exact marks that he made on the map, which is not where the
15 bodies were discovered at all. I asked him how deep the water
16 was where the bodies were placed and he said it was over his
17 head, it was very deep. Later, uh, uh, he told, uh, I think,
18 uh, Joe Calvin and Brent Davis that the water wasn't very deep
19 and he was going back and forth on that, as well. And then he
20 described this pipe, this huge pipe which had been the subject
21 of much testimony during the trial and this pipe that's in the
22 diagram that was prepared by the police department, is huge.
23 There's no way that you could wrap your arms around it. It's
24 probably five, six, seven feet in diameter. And Mr. Misskelley,
25 on February 8th described it as about as big around as his thigh,

1 his leg and, uh, he said, uh, the bodies were thrown in the
2 water there and, uh, that it was about fifteen yards from the
3 pipe where they were thrown in. And that's just not possible;
4 it couldn't have happened that way.

5 Q] He's also inconsistent about whether any boy was
6 unconscious at the time they hit the water?

7 A] It depended on which statement and which version, uh, one
8 time he said that, uh, uh, and of course, he kept getting the
9 kids mixed up, and which ones had the injuries mixed up, but one
10 time he said that they were unconscious; the next time he said
11 they were yelling "stop it, stop it," or squirming in the water,
12 uh, uh, he was also all over the map on whether sodomy had
13 occurred. Prior to Dr. Peretti testifying in Corning, uh, about
14 there being no sign of that, uh, physical signs of that, in his
15 June 3rd statement he says that, that he describes the sodomy and
16 in fact, he says that Damien and Jason held the little boys'
17 legs up in the air while one of the other two co-defendants were
18 forcibly sodomizing the child, uh, and then suddenly, uh, on
19 February 8th when he decides that the only way he can get out of
20 prison is to change his story and testify, he, uh, he tells me
21 that, uh, uh, "as far as I'm concerned, Damien didn't sodomize
22 the kid. He was going to, but he didn't do it." And that, I
23 think, was an effort to try to make the testimony comply with
24 what Dr. Peretti had testified. And then again on February 15th,
25 a week later, he says, "I wasn't there." And then on March 2nd,

1 "I wasn't there." And then again on this last tape that was
2 introduced he says he wasn't there either. He even talks about,
3 uh, Mr. Baldwin cutting the penis off. One time he says he did
4 and the next time he says he didn't see Jason do it. And then
5 there's this strange colloquy that he has with me on February 8th
6 about this older guy, uh, that was never mentioned in his
7 original statement, uh, an older guy that, uh, uh, went to the
8 crime scene and he was the boss that told Damien what to do.
9 And suddenly on February 8th, uh, he's telling me that, that, uh,
10 about this older guy being there and instead of in his original
11 statement to the police, him getting a phone call at nine
12 o'clock that morning from Jason, and meeting them at the crime
13 scene, suddenly now he's going to Lakeshore to meet Damien and
14 Jason with this older guy, who he doesn't know his name, but he
15 says he has a beard, a mustache and a glass eye and he has a
16 briefcase with a gun in it.

17 Q] And there was contradictions about whether and how Jason
18 cut someone?

19 A] Yes, he, he, uh, he in his original statement, uh, the
20 officers had to ask him twice if he even knew what a penis was,
21 uh, and he described it as Jason cutting him "down at the
22 bottom," uh, in the transcript and on the tape and then later he
23 describes the castration as a "quick swoop of the knife" uh, and
24 then later in a different statement he says he didn't see it
25 happen at all. And then the next week he says, "I wasn't even

1 there." So it's just constantly back and forth.

2 Q] And what about there were some contradictions also about
3 some clothing; what happened to the clothing at the scene of the
4 crime?

5 A] Yes, his original statement, uh, when he kept telling the
6 officers "I seen them do this and then I left," and the officers
7 would say "well, after you came back, what happened?" They
8 would ask him questions like "well, did the little boys have
9 their clothes on or off when they were tied up?" Uh, and then
10 on February 8th, Mr. Misskelley relates to me that, uh, uh, Mr.,
11 uh, Echols had masturbated on the little boy's pants, which
12 again, I think is a relation back to Dr. Peretti's testimony and
13 also DeGuglielmo's testimony regarding this alleged seminal
14 fluid that had been found on the pants. I think Mr. Misskelley
15 was trying to conform his statement to the evidence as best as
16 he could, in his own simple way.

17 Q] And there were also contradictions about what he and Damien
18 Echols and Baldwin were wearing; right?

19 A] Yes. That was all over the map, as well. One time he was
20 wearing a white T-shirt with a basketball on it; the next time
21 he's wearing a gray T-shirt.

22 Q] Describe who "he" is?

23 A] "He," Jessie, yes. Uh, He describes the clothing in the
24 June 3rd statement I believe as blue jeans and then, uh, at Joe
25 Calvin's office I think he describes them as leather, black

1 leather pants; I have to make sure my notes are correct on that.
2 Actually, at Joe Calvin's office and this so-called second
3 confession made on February 17 he immediately tells Brent Davis
4 that he doesn't remember what Jason and Damien were wearing.
5 And there was also, uh, this mysterious club house or tree
6 house, uh, there's no mention of it in his June 3rd statement,
7 but then suddenly on February 8th, after the discussion about
8 Aaron Hutcheson and this club house, uh, Jessie says there was a
9 club house. And there wasn't a club house that was at the crime
10 scene.

11 Q] And there are all sorts of other inconsistencies in this?

12 A] I could go on for hours.

13 Q] Well, what other major ones were there that you would point
14 to?

15 A] Uh, one of the major ones I think is that, uh, on June 3rd
16 Jessie said that he got a phone call later that night, uh, I
17 think he said it happened at 9:00 p.m., uh, uh, I'm a little bit
18 afraid to use the phrase 9:00 a.m. or 9:00 p.m. after what
19 happened earlier, but uh, he said it was approximately 9:00 p.m.
20 that he got a phone call from Jason saying, "We did it; we did
21 it," and he could hear Damien in the background, uh, then later
22 on in his statements he says he never talked to Damien and Jason
23 again about it. So, I mean, again, it's just one of those
24 things that he was all over the map on.

25 Q] Of course, all of these statements are in the, basically,

1 in the evidence and we can propose findings of fact and be able
2 to chart them, so I won't belabor all of these other points.

3 A] On June 3rd he said that the murders happened at noon, uh,
4 obviously, that couldn't have happened because the little boys
5 were in school until three o'clock. They were last seen riding
6 their bicycles about 6:30 p.m., uh, and I need to use the word
7 "approximately," I guess, how I describe that, uh, on the
8 service road at 6:30 p.m. and then suddenly he's moving from
9 noon, because the officers knew that wasn't correct on June 3rd,
10 to five or six. And then suddenly on this approximately twelve
11 minute taped to clarify on June 3rd, where the officers don't
12 even say what time the interview starts, uh, the first thing
13 that Gitchell says when he walks in the room is, "now you told
14 me earlier it was seven or eight." And Misskelley goes "seven
15 or eight." So, uh, Mr. Misskelley will tell you whatever you
16 want to hear, uh, that's pretty much the way that works.

17 Q] Now Mr. Holt had you identify certain documents from the
18 file, number 12; is that correct?

19 A] Well, exhibit 12 has many sub sections.

20 Q] Yes, that's what I want to ask. Is exhibit 12 - - the big
21 exhibit 12 is your big file with all of these various papers in
22 it?

23 A] Yes, notes and memos from the file.

24 Q] And, and those documents which have the numbers on them, E,
25 B, C, F, whatever, you and Mr. Holt - - and I was in the room

1 part of that time - - but Mr. Holt just went through and pulled
2 out certain ones out of that file for specific identification;
3 is that correct?

4 A] Yes, sir. But there's different variations of what Mr.
5 Misskelley told me than what I just testified to, because I
6 haven't seen those documents in years, uh, there's even more
7 contradictions than those.

8 Q] Well, what I'm getting at specifically in my questioning
9 here, is that just because certain things, uh, were picked out,
10 those were Mr. Holt's choices as to what to pick out; is that
11 correct?

12 A] That's correct.

13 Q] And they were not decided to be picked out by you or me;
14 right?

15 A] No, they were his choices.

16 Q] The, uh, there was a statement recorded, telephone
17 conversation where Mr. Crow is the only - - and Mr. Misskelley
18 are the only two voices on that tape. Uh, were you, were you
19 present in the room when that statement was recorded, or do you
20 remember?

21 A] I can't say with one hundred percent accuracy that I was,
22 but I think I, it sounds like it was on the speaker phone and I
23 think I was standing there while it was being recorded.

24 Q] And that reflects at the time that Mr. Misskelley is mad at
25 you?

1 A] He was very angry. When we got to Mr. Calvin's office that
2 night on February 17th he would not even talk to me.

3 Q] And so was it decided that Mr. Crow might be a better
4 person to talk to Jessie at that point?

5 A] Yes.

6 Q] But it was done with your authorization?

7 A] Oh, I knew about it; yes, sir.

8 Q] But was it in your presence?

9 A] I can't say, and again, with one hundred percent accuracy
10 that I was actually standing there but I, I do remember, uh,
11 that happening; yes, sir.

12 MR. ROSENZWEIG: I pass the witness, Your Honor.

13 THE COURT: Anything else?

14 MR. HOLT: Just a little bit.

15 THE COURT: Okay.

16 MR. HOLT: I need to move for introduction of
17 this if I haven't already; State's Exhibit #9.

18 THE COURT: All right, it may be received without
19 objection.

20 (WHEREUPON, State's Exhibit #9 was admitted and received into
21 evidence and is appended on page .)

22 RE-CROSS EXAMINATION

23 BY MR. HOLT:

24 Q] Does this tape of Mr. Crow and Mr. Misskelley have a back-
25 ground voice saying "Testing, 1,2,3," is it possible that was

1 you?

2 A] It's very possible. Yes, sir. I've listened to the tape
3 over the last week or so and, uh, I seem to have a recollection
4 of it happening.

5 Q] Okay. Now you said Jessie was essentially - - I guess,
6 suggestibility - - Jessie would tell anybody what they wanted to
7 hear?

8 A] Yes, sir.

9 Q] Okay. So on June 11th when you took those notes that you
10 read yesterday, he was telling you what you wanted to hear?

11 A] On June the 11th?

12 Q] June 11, 1993?

13 A] Yes, sir, he was trying desperately to tell me exactly what
14 I wanted to hear. And I was very frustrated because I couldn't
15 figure out how in the heck I was going to get this kid ready to
16 testify, when he couldn't get the facts right.

17 Q] On February 8th, was he telling you what you wanted to hear?

18 A] Well, I guess that depends on your point of view. He was
19 telling me what he thought he needed to say to get out of
20 prison.

21 Q] But it wasn't what you wanted to hear?

22 A] It didn't matter what I wanted to hear.

23 Q] Well, I'm asking you. Was he telling you what - - you said
24 when he talked, whoever he talked to, whenever he talked to them
25 he would tell them what they wanted to hear. Was he telling you

1 what you wanted to hear February 8th?

2 A] On February 8th I practically begged him to give me some
3 piece of evidence, some way, for me to corroborate what he was
4 telling me. And he couldn't do it.

5 Q] Okay. When you yelled at him, was he telling you what you
6 wanted to hear?

7 A] When I yelled at him?

8 Q] Yeah, when you yelled at him. You said that you had
9 reviewed Mr. Crow's telephone conversation, and in that
10 conversation Mr. Misskelley says you yelled at him?

11 A] Oh, I thought you were talking about on February 8th.

12 Q] No, I'm saying - - well, whenever that was when you yelled
13 at him, was he telling you what you wanted to hear?

14 A] When I got to Mr. Calvin's office, and keep in mind, I was
15 stunned by this revelation because I thought Mr. Misskelley was
16 in prison, and then I found out that he was at Mr. Calvin's
17 office and that gave me fifteen minutes notice...

18 Q] ...right. You've testified to that...

19 MR. ROSENZWEIG: ...Your Honor, he was, Mr. Stid-
20 ham was still talking.

21 THE WITNESS: I'm trying to answer his question,
22 uh, I, I...

23 THE COURT: ...well, every time you answer a
24 question, you don't have to make a ten or fifteen-
25 minute explanation.

1 Just answer "yes" or "no" and then if you feel
2 the need to make an explanation, I'm going to let you.

3 MR. HOLT: What I would prefer is an explanation
4 and not a narrative response. I know that you're fully
5 capable of giving a narrative response.

6 THE WITNESS: What does that mean?

7 MR. HOLT: Just answer the question.

8 THE WITNESS: What is the difference between a
9 narrative response and an explanation?

10 MR. HOLT: I'm asking the questions, Mr. Stidham;
11 if you will just simply answer the question?

12 THE WITNESS: Well, I guess you're going to have
13 to repeat the question, because I have no idea what
14 you're talking about.

15 You asked me when I was yelling and why I was
16 yelling at Mr. Misskelley and I was trying to answer
17 that when you interrupted me.

18 RE-CROSS EXAMINATION, continuing:

19 Q] I asked you when you yelled at him, was he telling you what
20 you wanted to hear. First, say "yes" or "no"?

21 A] No.

22 Q] He was not telling you what you wanted. So he wasn't
23 telling you what you wanted to hear?

24 A] I wanted him to talk to me and he wouldn't talk to me.

25 Q] Okay.

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

2 THE WITNESS: Now may I explain?

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

4 RE-DIRECT EXAMINATION

5 BY MR. ROSENZWEIG:

6 Q] Explain, please?

7 A] I got a phone call, uh, that my client was at a prosecuting
8 attorney's office and was about to give a statement to the
9 prosecutor - - not a deputy prosecutor, but Mr. Davis, the
10 prosecutor of the district. And naturally, I was stunned by
11 this development because I had no idea that he was in Clay
12 County; I thought he was in Pine Bluff. So I get there and Mr.
13 Misskelley refuses to talk to me and so he and I got into a, uh,
14 pretty heated, uh, discussion about why he wouldn't talk to me
15 and, uh, uh, on the tape, uh, that he, uh, didn't want to talk
16 to me anymore. He talked to Mr. Crow but, uh, as is pointed out
17 in the tape that was introduced into evidence, it explains all
18 of the reasons why he wouldn't talk to me, because they told him
19 - - this is the State's agent telling him that I wasn't a good
20 lawyer, that I had only handled DWI case, wasn't capable of
21 representing him and that he needed to listen to them if he ever
22 wanted to get out of prison. That's why he wouldn't talk to me.

23 MR. ROSENZWEIG: That's all I have.

24 MR. HOLT: No further questions.

25 THE COURT: All right. Are you going to need

1 this witness back later?

2 MR. ROSENZWEIG: It's conceivable we'll need him,
3 Your Honor.

4 THE COURT: Okay, you'll still be under the Rule,
5 that you're not to discuss the case with anyone and be
6 subject to call, and you're free to go.

7 MR. HOLT: Mr. Stidham also agreed that he will
8 provide us with addresses or contact information.

9 THE COURT: Yes, for paralegal and staff, you
10 need to provide that for them.

11 THE WITNESS: Do you have an e-mail address or a
12 card or something that I could contact you?

13 MR. HOLT: Yes.

14 THE COURT: All right, I think we've already got
15 the scheduling done, and I can't remember the date,
16 but because of Mr. Phillipsborn's conflict or Burt's,
17 I can't remember, both of them had one, so it's going
18 to be August, I think.

19 MR. ROSENZWEIG: August, two weeks in August has
20 been set aside.

21 THE COURT: Yes.

22 THE WITNESS: Which two weeks? Is there some way
23 that I can see?

24 THE COURT: It was the week of the 10th of August;
25 I remember that because that's my birthday. All

1 right, court will be in recess.
2 (WHEREUPON, the proceedings in the above-styled cause were
3 concluded April 3, 2009 until August 18, 2009.)

4 **AUGUST 10, 2009**

5 THE COURT: All right, I can't remember where we
6 left off. Who was our last witness?

7 MR. ROSENZWEIG: Good morning, Judge.

8 THE COURT: Good morning.

9 MR. ROSENZWEIG: Your Honor, the last time we were
10 here, was to finish the Stidham cross-examination.

11 THE COURT: Did we finish that?

12 MR. ROSENZWEIG: I believe so.

13 MR. HOLT: Almost, but for purposes of that false
14 confession issues and his connection to the
15 professionals.

16 MR. ROSENZWEIG: Yes. The last time we were here,
17 Your Honor, uh, Mr. Baldwin was not here at all. We
18 did two days with Mr. Stidham, but the Baldwin team
19 was not here at all.

20 Before we start, Your Honor, I think it's
21 appropriate at the beginning of these proceedings. A
22 year ago, we had moved for Your Honor's recusal on
23 several grounds, and of course, were denied it.

24 We need to, uh, I think it would be appropriate
25 to renew that, and largely because of the, well, at