

1 reward even relevant if you're talking about somebody
2 else getting a reward?

3 MR. CROW: From a logical standpoint we all know
4 that if the child is going to get funds--

5 THE COURT: I'm ruling right now it's not
6 relevant because a proper foundation has not been laid
7 for impeachment.

8 MR. STIDHAM: We'd like to have an opportunity to
9 discuss that and make a decision.

10 THE COURT: Sure.

11 MR. STIDHAM: Your Honor, we need to have an
12 in-camera hearing with regard to the issue we
13 discussed earlier.

14 THE COURT: I'm going to let the jury go to lunch
15 until 1:00 o'clock.

16 (RECESS)

17 (THE FOLLOWING CONFERENCE WAS HELD IN CHAMBERS)

18 THE COURT: Let the record reflect that this is a
19 hearing out of the presence of the jury.

20 MR. STIDHAM: We talked about this, I think
21 during the voir dire or prior to the voir dire
22 examination, when we expressed our concern that the
23 prosecution was going to attempt to somehow impeach
24 our expert, Doctor Wilkins, on his credibility due to
25 some disciplinary proceeding that had been pending.

1 I don't know how, but somehow the press learned
2 of this and made a pretty good heyday of it. I before
3 haven't spoken to anybody down at the attorney of the
4 general's office. I talked to Jim Taylor of Channel
5 Eight News yesterday, and he told me he had personally
6 went down and inspected the file and told me he file
7 actually had the head honcho, guru, of the psychology
8 board of examiners, whoever he is, on tape saying that
9 Doctor Wilkins was in good standing and could practice
10 psychology and so I thought the issue was pretty much
11 a dead issue. telephone number of who I could contact to

12 get. I'm gravely concerned about how this information
13 got leaked to the press. I'm not going to sit here
14 and even insinuate that Mr. Davis or Mr. Fogleman did
15 it because I have no proof or reason to believe that.
16 But I think it is kind of ironic, to say the least,
17 that the press had to pick up on this. I've never
18 been involved in a case where the press goes down to
19 Little Rock and starts looking into whether someone is
20 on the disciplinary board. -- you indicated you're

21 THE COURT: You have never been involved in a
22 case like this before --

23 MR. DAVIS: Judge, may I for the record?

24 THE COURT: Yes. handed the file this morning.

25 MR. DAVIS: When Mr. Fogleman and I were at the

1 State Crime Lab talking with Doctor Peretti, whenever
2 that was, Channel Four was there. It was days before
3 the trial started -- probably Monday or Tuesday of the
4 week before we started picking the jury -- I get a
5 phone call while I'm there and a newspaper reporter
6 calls me and says, are you aware that there is a file
7 that is accessible to the press through the Freedom of
8 Information Act in Little Rock that contains all this
9 stuff on Doctor Wilkins, and that newspaper reporter
10 advised me that they were copying the entire file and
11 gave me the telephone number of who I could contact to
12 get my hands on it and as a result of that, that is
13 where I got my information. They contacted me first.

14 MR. STIDHAM: Your Honor, we have a kid's life at
15 stake here, and here we are on the day that my witness
16 is supposed to take the stand and testify and I get
17 handed a file from the attorney general's office dated
18 January 28th -- and this is the first of February --
19 purporting that the Court is now -- in conversations I
20 had with the Court earlier -- you indicated you're
21 going to let the State impeach him with regard to the
22 contents of that file. *lasting probably five minutes*

23 THE COURT: That is not exactly what the Court
24 said. The Court was handed the file this morning,
25 because of my previous ruling that should be a matter

1 of record where I disallowed the State, or indicated
2 that I would not allow the State to inquire into the
3 reason for or the purpose for disciplinary action that
4 was scheduled against Doctor Wilkins.

5 I was led to believe by all of you at that time
6 that he had not been afforded due process, that there
7 had not been a hearing, that there had not been any
8 administrative action taken against him that would
9 jeopardize his practice in any way.

10 That Based upon that, since the man had not been given
11 due process and since there had been no action taken
12 against him, I wasn't going to allow the inquiry. I
13 understand it had something to do with having an
14 eight-year-old, ten-year-old, sixteen year old boy --
15 whatever the age was -- to expose himself in the
16 presence of the doctor, at least that is one of the
17 allegations that allegedly had been made. I wasn't
18 going to let them inquire into that. I'm not sure
19 that even at this point, that the specific reason for
20 any disciplinary action against him, that that needs
21 to be inquired into.

22 However, this morning probably five minutes
23 before I handed it to you, Mr. Stidham, I was given a
24 copy of a court order and stipulation of settlement,
25 not only that was before an administrative hearing

1 tribunal which constituted a court of record, but also
2 a document signed by Doctor Wilkins stipulating that
3 the administrative proceedings could be settled based
4 on certain conditions. And then I find that the
5 hearing that he missed last Friday, which there was a
6 bunch of conversation about, and it was following that
7 that an article that I saw, a three-inch column in the
8 Jonesboro Sun on page seven, as I recall, mentioned he
9 was scheduled to appear before the disciplinary board.
10 That's about the extent of it. It didn't go into the
11 purpose or cause. ~~Now can we say that he had been~~

12 However, this consent order restricts his ability
13 to take new patients, restricts his ability to render
14 evaluations. It requires that a doctor, and I believe
15 it was one that Doctor Wilkins agreed to named
16 Williamson who practices in Little Rock, to monitor
17 his evaluations, just ordinary evaluations. And it
18 excluded him from doing certain kinds of practice. I
19 think it was neuropsychology.

20 And that is why we are here right now. I don't
21 know what's fair game and what's not, but certainly it
22 is not the picture that was given to the Court
23 originally about a man not being given due process and
24 thereby being impeached or his credibility challenged
25 where he hadn't been given due process. ~~Can we say that~~

1 I find now that that's just exactly the contrary
2 of what --

3 MR. CROW: Your Honor, for the record, we
4 certainly didn't purposely mean to mislead the Court.

5 THE COURT: I'm not saying that. I'm just saying
6 it's a different situation.

7 MR. STIDHAM: Your Honor, this stipulation that
8 he entered into as I understand it is in lieu of
9 disciplinary proceedings.

10 THE COURT: Well --

11 MR. STIDHAM: How can we say that he has been
12 disciplined or on probation for anything when this
13 agreement was in lieu of that? Furthermore, the
14 people I have talked to about this say -- whoever is
15 the governing board of this -- has indicated that he
16 is not on probation. In fact Doctor Wilkins has told
17 me a couple of days ago he's considering legal action
18 against the Jonesboro Sun for printing that false
19 information.

20 The problem is -- and the big concern, your
21 Honor, is this kid's life is at stake. Here we are on
22 the day my expert is supposed to take the stand and we
23 get this big file that the prosecutor has apparently
24 had since the 28th, and I get to see on the first, and
25 they are going to go in there and impeach our expert

witness on his credibility based on this stuff -- and

1
2 THE COURT: What is it you want the witness to
3 testify to, first of all, and then I want to know how
4 you want to go about impeaching him.

5 MR. DAVIS: I'll tell you how I intend on
6 impeaching him when I find out what his testimony is
7 going to be.

8 MR. STIDHAM: Your Honor, we intend -- just as we
9 did at the previous hearings with Doctor Wilkins -- to
10 ask Doctor Wilkins to testify about psychological
11 testing that was conducted on the defendant. IQ
12 testing, his MMPI, the tests that he testified to
13 earlier.

14 THE COURT: What is that?

15 MR. STIDHAM: The test that he does -- I'm not a
16 psychologist. I've got all my notes.

17 MR. CROW: He did the ball of clay, the checkers
18 --

19 MR. STIDHAM: I'm not going to ask Doctor Wilkins
20 to testify about brain damage or stuff of that --

21 THE COURT: You're going to ask him about all
22 those psychological tests and then what else?

23 MR. STIDHAM: We had intended to also after he
24 talked about the tests that he had given the defendant
25 and what the results of those tests were, we

1 anticipated asking him whether he had any training and
2 experience with regard to cults. And ask him what his
3 experience, education, training and background is with
4 cults and have him testify whether or not he has an
5 opinion as to whether or not these homicides are cult
6 related.

7 THE COURT: I wouldn't allow that.

8 MR. STIDHAM: Why not, your Honor?

9 THE COURT: I wouldn't allow him to formulate
10 that kind of opinion. That is for the jury to decide.

11 MR. STIDHAM: Your Honor, that is what an expert
12 is for is to help the jury understand the issues.
13 Basically, the jury has been given a picture --

14 THE COURT: You're going to qualify him as an
15 expert in cult activity?

16 MR. CROW: He's given seminars on it, your Honor.

17 MR. DAVIS: He's given seminars on forensic
18 psychology, too, and they are telling him he doesn't
19 have any background in that.

20 MR. STIDHAM: Your Honor, he's given, as I
21 understand it, four thousand forensic evaluations.
22 How can he not be learned in that area? That is what
23 the State of Arkansas has asked him to do on over four
24 thousand cases. He gives forensic evaluations.

25 As I understand the rule, there is no -- just

1 like lawyers can't say I'm a criminal lawyer or I'm a
2 -- you can't set out to be an expert in a certain
3 field or specialize in a certain field. I understand
4 there's no licensing requirement for a forensic
5 psychologist. That's my understanding of the law.

6 MR. DAVIS: You have to submit a letter of intent
7 indicating the areas of practice which you will be
8 involved in and have that letter of intent approved by
9 the board before you practice in certain areas.

10 And that is exactly what they go into. In this
11 hearing transcript it says when it comes to forensic
12 psychology that he has never submitted a letter of
13 intent indicating that he's practicing in that area.
14 In the transcript where he was under oath he testifies
15 -- they said, "What training have you received to do
16 forensic examinations?"

17 And he goes, "Well, I have tried for the last
18 three years to take this course but I just can't get a
19 hold of the guy who teaches it."

20 And then they go on to say, "We have grave
21 concerns whether he should be allowed to do forensic
22 examinations with no past training or background."

23 MR. STIDHAM: Your Honor, if the Court is going
24 to allow him to impeach based on this stuff at the
25 very last minute, we would ask for a continuance and

1 allow us to find a psychologist -- and we'll go down
2 to Little Rock this time and we will look in the files
3 and make sure there's not any disciplinary actions
4 pending. This kid's life is at stake, your Honor. If
5 we need to get him evaluated again, that's what I'd
6 like to do. We'd ask for a continuance. This has
7 obviously been a surprise to us. They've had this
8 information. We didn't get it until today.

9 MR. CROW: Your Honor, I would point out that
10 according to what Mr. Davis just said, he received
11 this information before we started voir dire. He was
12 down in Little Rock --

13 THE COURT: That was after the jury was picked.

14 MR. FOGLEMAN: Even if we had, this is rebuttal
15 type information. We don't have to give what we are
16 going to ask them questions about -- what cross
17 examination -- so they can get the experts coached --

18 THE COURT: Well, it goes to the weight of his
19 testimony anyway. I guess it touches his credibility
20 to some extent.

21 MR. FOGLEMAN: Your Honor, on the occult thing
22 we'd say that he's not qualified in that area to give
23 an opinion on that.

24 MR. STIDHAM: Judge, you know why there's no such
25 thing as a cult psychologist? Because there ain't no

1 such thing. I'm going to allow you to go into specific

2 THE COURT: Doctor Jim Richardson at the
3 University of Nevada is a recognized expert in it.

4 MR. STIDHAM: There's never been a documented
5 case of satanic cult ritualistic homicide anywhere in
6 the country.

7 MR. FOGLEMAN: You're getting that from Ofshe.

8 MR. STIDHAM: I got that from the FBI and Doctor
9 Wilkins.

10 MR. DAVIS: Was it from the FBI through Doctor
11 Ofshe?

12 MR. STIDHAM: Doctor Park Dietz is one of the
13 most renowned forensic psychologists in the world and
14 he has written a pamphlet. I can show you the
15 pamphlet.
16 Judge, this is a witch hunt and we should have
17 the right to show that there's never been a documented
18 case of satanic ritualistic homicide anywhere in the
19 country. We ought to be able to have a psychologist
20 who's familiar with that literature and the scientific
21 proof to show that to the jury.

22 THE COURT: I'm going to allow you to put on
23 Doctor Wilkins and get whatever you can out of him,
24 and I am going to allow them to cross examine him and
25 impeach him.

1 I'm not going to allow you to go into specific
2 instances of misconduct, however -- unzipping the
3 boy's pants and dropping his trousers -- I'm not going
4 to allow that.

5 I will allow you to ask him if he has entered
6 into a consent order with the licensing board
7 restricting his practice to certain areas. And the
8 content of his previous sworn testimony can be used to
9 impeach him, not to impeach him but to go against his
10 capability of formulating the opinions he's going to
11 render.

12 MR. DAVIS: Judge, one other area in there -- as
13 part of that order, they required him to undergo
14 psychological evaluation. The report from Doctor
15 Hazelwood concerning his psychological evaluation
16 indicates that he found substantial evidence that
17 Doctor Wilkins suffers from the same -- basically the
18 same diagnosis that he diagnosed the defendant with.
19 And since his personal perception --

20 THE COURT: You mean he has an IQ of 72?

21 MR. DAVIS: They didn't give him an IQ test.
22 Other things in that report indicate -- let me find
23 that and show you.

24 MR. STIDHAM: Your Honor, we respectfully ask for
25 a continuance and have an opportunity to have this

defendant evaluated. that he wasn't on probation, that

1
2 MR. DAVIS: Judge, in regard to the continuance
3 Mr. Stidham or Mr. Crow were the first ones to bring
4 up the matter of Doctor Wilkins' potential problems
5 sometime during jury selection. And they're the first
6 ones that mentioned it, showed concern that it might
7 be a problem at the trial. as you your witness knows.

8 MR. STIDHAM: And the Court ordered the ing not
9 prosecution not to impeach the witness based on --

10 MR. CROW: At that time, your Honor, the as a
11 prosecution said, the only question I intend to ask is
12 if he is a member in good standing with his board.

13 MR. DAVIS: I didn't know this. ation.

14 MR. STIDHAM: This kid's life is at stake here.

15 THE COURT: I understand that your defendant has
16 got a great stake in this, but you also need to have
17 proper evidence, and the State also has the right to
18 impeach your witnesses when they can. Y'all totally
19 and completely misled the Court when you indicated --

20 MR. STIDHAM: Your Honor, we didn't --

21 THE COURT: I'm not saying it was a willing or
22 knowing thing, but you certainly led the Court to come
23 to the conclusion that the man hadn't had due process
24 when I find that he has. him. You've got until

25 MR. STIDHAM: He told us there was no

1 disciplinary action, that he wasn't on probation, that
2 it was pending.

3 THE COURT: What does that settlement say? Does
4 it place him on probation?

5 MR. STIDHAM: Your Honor, we didn't see this
6 until 30 minutes ago.

7 THE COURT: I'm telling you your witness knows.
8 Did he lie to you? Is that what you're telling me?

9 MR. STIDHAM: He said he was not on probation, he
10 was a member in good standing and that there was a
11 hearing pending. That's all he told us.

12 MR. DAVIS: It is not our fault that the witness
13 has short sheeted them on the information.

14 MR. STIDHAM: This is a capital murder case --

15 MR. FOGLEMAN: I have got a feeling that Ofshe is
16 going to be relying on some of Doctor Wilkins' tests
17 and just because we come up with some good cross
18 examination material, they shouldn't be allowed to
19 say, wait a minute, now that you have come forward and
20 told us you've got some good cross examination, we
21 want to change so the expert will have something
22 worthwhile to rely on.

23 THE COURT: I'm not going to continue the case.
24 Y'all don't have to call him. You've got until
25 tomorrow. Maybe you can have somebody conduct an

evaluation tonight and tomorrow.

1
2 MR. FOGLEMAN: We won't have been given the name
3 of the witness -- it is obviously his perceptions. For

4 THE COURT: That's a decision they'll have to
5 make. I'm not going to allow you to go into sexual
6 perversion or the specific incident of conduct, but I
7 will allow you to inquire into any sworn testimony
8 that he's given to a disciplinary board.

9 I would prefer that you not necessarily refer to
10 it as a disciplinary action, but you may refer to it
11 as a -- far as his personal interpretation and his

12 MR. STIDHAM: The prejudice is going to be so
13 great to that jury. They're not going to understand
14 what a disciplinary hearing is or what a settlement in
15 lieu of formal disciplinary action is.

16 THE COURT: I didn't pick the witness. You can
17 either call him or not call him but if you do call
18 him, I'm going to allow them to cross examine him, but
19 I'm not going to allow them to cross examine him like
20 he's a dirty old man or that he made a little boy drop
21 his pants. I'm not going to allow that. That would
22 be more prejudicial than probative.

23 MR. CROW: Your Honor, as far as any
24 psychological testing he's undergone, I object to any
25 reference to it, much less the outcome. I think the

1 prejudice there would far outweigh the -- or the
2 MR. DAVIS: Judge, the reason we are interested
3 in going into that is obviously his perceptions. For
4 example, one of the tests that they conduct is called
5 the house/tree/person test, and he gives nearly three
6 paragraphs of findings based on Jessie Misskelley
7 drawing a house, a tree, and a person and as part of
8 those findings, he says that he makes these findings
9 because he interprets it to represent phallic symbols,
10 which we've got -- I intend to go into that with him.

11 As far as his personal interpretation and his
12 personal viewpoints and his personal idiosyncrasies,
13 his personal credentials are all very important in
14 determining if he's going to make these judgment calls
15 based on the drawing of a house, a tree and a person,
16 then he's going to have to stand up there and suffer
17 through cross examination. ~~represented to you~~

18 THE COURT: I'm going to allow it. I'm not going
19 to allow you to refer to that letter where he's been
20 psychoanalyzed or been evaluated by another ~~two prior~~
21 psychologist. What I will allow you to do is ask him
22 if his competency in those areas has ever been
23 challenged by other professionals and if you lay the
24 proper foundation, I will allow you to confront him
25 with that letter, give him an opportunity to review it

1 without letting that letter be displayed or the
2 contents read to the jury. I will allow you to cross
3 examine him in that regard.

4 All that business as it first came up to me was a guy
5 had taken a kid in and had him drop his pants and
6 hadn't had a hearing on it. I find now that is
7 totally and completely different. How did you come by
8 this guy? Did he volunteer?

9 MR. STIDHAM: Judge, it is real hard to find
10 someone to --

11 THE COURT: I just want to know how you came by
12 him.

13 MR. STIDHAM: We made some phone calls and found
14 someone who was willing to work on the chance that
15 they might get paid. We have an indigent defendant
16 who is facing capital murder charges.

17 THE COURT: He made no representation to you
18 whatsoever --

19 MR. STIDHAM: -- absolutely not, your Honor --

20 THE COURT: -- about having not one but two prior
21 hearings where testimony was taken where he had
22 entered into a consent order?

23 MR. STIDHAM: When we asked him the other day
24 when this subject came up, he insisted --

25 THE COURT: Have you asked him about the consent

1 order?

2 MR. STIDHAM: We have seen this a few minutes
3 ago. This is a complete and total surprise to us --

4 MR. FOGLEMAN: But y'all knew about it during
5 voir dire --

6 MR. STIDHAM: If this was going to become an
7 issue, we asked the Court --

8 MR. CROW: -- what he told us --

9 MR. STIDHAM: Just a minute. Your Honor, we
10 asked during voir dire if this was going to be allowed
11 and the Court said no. We asked at that point --

12 THE COURT: What was going to be allowed?

13 MR. STIDHAM: Whether they were going to be able
14 to impeach him with this disciplinary stuff.

15 THE COURT: I don't remember the exact words but
16 that's essentially it, whether or not I was going to
17 allow the State to go into whether or not he had been
18 disciplined. Y'all told me -- and I think I asked has
19 he had a hearing, has he been before the board, and I
20 was told no.

21 MR. STIDHAM: He told us it was pending, your
22 Honor. We also asked for a continuance if this was
23 going to become an issue so we could have Mr.
24 Misskelley evaluated. And here we are on the day that
25 Mr. Wilkins is going to testify and we get shown a

1 pamphlet from the attorney general's office that the
2 prosecution has had for four days.

3 Judge, that is surprise if I've ever seen it.
4 This man's life is at stake.

5 MR. FOGLEMAN: Your Honor, I don't think it was
6 even a requirement that we disclose it at all until
7 after the man had testified.

8 THE COURT: That's not the issue. The only issue
9 is --

10 MR. STIDHAM: -- justice and fair play.

11 THE COURT: Justice and fair play would also
12 allow the State to inquire into the competency and
13 credibility of your witness. Justice and fair play
14 wouldn't allow you to put on a witness that has lied
15 to you about his professional standing and has lied to
16 you about ever having appeared before a disciplinary
17 board.

18 MR. CROW: I'm not so sure he's lying to us.

19 MR. STIDHAM: I think it's a matter of
20 interpretation, your Honor. This looks to be an
21 agreement in lieu of formal disciplinary proceedings.
22 That's the way I read that. And I think that is the
23 common sense interpretation and logical interpretation
24 of what this information says.
25

MR. DAVIS: It says, "probationary stipulation,"

1 is what it refers to, which indicates that he's on
2 probationary status.

3 THE COURT: Isn't there an order in there, too?

4 MR. STIDHAM: I haven't had an opportunity to
5 properly review it. Judge, if I hadn't heard through
6 the grapevine that this was going to come up, we would
7 have been bushwhacked with it. first of February and

8 THE COURT: I don't want to have to try this case
9 over again because of some nitpicking thing or because
10 of some -- put him on.

11 MR. STIDHAM: We're not going to ask him anything
12 about neuropsychology. All we want to do is get the
13 psychological testing in -- he witnesses as you find

14 THE COURT: What you want to do is put this man
15 on now and allow him to testify to whatever you want
16 and restrict the State from cutting him up if they
17 can. That is exactly what you want to do.

18 MR. STIDHAM: No, your Honor. I want to reach a
19 compromise if we can reach a compromise. Otherwise,
20 in the interest of justice I feel we need to have a
21 recess in order to have Mr. Misskelley evaluated. We
22 have spent hours and hours and hours with Doctor
23 Wilkins since back in October. No one ever indicated
24 to us -- COURT: Almost daily.

25 THE COURT: Why don't you talk to Doctor Wilkins

1 and confront him with it and see what we come up with
2 and see where we stand.

3 MR. STIDHAM: Your Honor, this is patently unfair
4 to the defendant and is a violation of his due process
5 rights and his right to receive a fair trial.

6 THE COURT: In what way?

7 MR. STIDHAM: Today's the first of February and

8
9 THE COURT: I'm not preventing you from putting
10 him on. Put him on.

11 MR. STIDHAM: Your Honor, we're painted into a
12 corner with regard to this --

13 THE COURT: You take the witnesses as you find
14 them. I didn't create the man. You didn't either as
15 far as I know.

16 MR. STIDHAM: We didn't create this problem.

17 THE COURT: Well, I sure didn't. I just
18 inherited it here at the last minute.

19 MR. DAVIS: Judge, one thing for the record is
20 Doctor Wilkins has been here continually throughout
21 the trial and has conferred with defense counsel
22 numerous times during the course of the trial so they

23 certainly --
24 THE COURT: Almost daily.

25 MR. DAVIS: -- at least since the time they

1 acknowledged to us that they were aware this problem
2 existed have had access to Doctor Wilkins to certainly
3 determine from him what was contained in his file.
4 And all of the documents that we have in our file
5 received from the attorney general's office are from
6 documents which either Doctor Wilkins has signed or
7 mailed to him or letters that originated from Doctor
8 Wilkins so he's acutely aware of all this. and asking

9 THE COURT: My ruling is going to stand. I'm
10 going to allow you to cross examine him. I'm not
11 going to allow reference to exposing the child. I'm
12 not going to allow you to make a direct reference to
13 the letter from the psychologist that did studies on
14 him although you can set him up for that and then
15 confront him with it without telling the jury what it
16 is. THE COURT: Did he?

17 If y'all don't want to put him on under those
18 bases, then you better get busy right now and try to
19 find you another doctor. If it develops that it takes
20 another day or two, then I'll permit that, but you're
21 going to have to get busy. Surprised, Judge.

22 But to me the interest of justice allows both
23 sides to attack the credibility of any witness. His
24 credibility came with him bag and baggage. house

25 I didn't read all that stuff either. I did read

1 what I thought was an order signed by a hearing
2 administrator and signed by Doctor Wilkins.

3 MR. STIDHAM: Would the Court call whoever the
4 head guy is and inquire what his official status is
5 with the board? I'm getting conflicting reports from
6 members of the media and what Mr. Davis is telling us.

7 THE COURT: The media is talking to you about it?

8 MR. STIDHAM: Yeah, they're coming up and asking
9 me about it. Jim Taylor of Channel Eight News said
10 that he had talked to the person responsible in Little
11 Rock and said he was not on probation and that he was
12 a member in good standing. I thought this issue was
13 dead.

14 MR. DAVIS: As I understand it, Doctor Wilkins
15 gave a two hour interview to KAIT Sunday afternoon.

16 THE COURT: Did he?

17 MR. STIDHAM: I have no knowledge.

18 THE COURT: That would be something you could use
19 to impeach him, too.

20 MR. STIDHAM: If monkeys flew around the room
21 right now, I wouldn't be surprised, Judge.

22 MR. CROW: One thing, your Honor, that concerns
23 me. If we limit his testimony -- I think we can do
24 that -- to take out the thing about the tree, house --

25 MR. DAVIS: I don't want --

1 MR. CROW: -- we can limit his testimony -- I
2 realize you don't want that -- but if that is not what
3 he's basing his opinion on when he gives his purpose
4 testimony, how can they impeach him on that?

5 MR. STIDHAM: Judge, is this about justice and
6 truth and whether or not this kid is innocent or
7 guilty, or is this about trying to get a conviction
8 and confusing the jury -- it would not let Doctor

9 THE COURT: From the prosecutor's standpoint,
10 they probably want a conviction. From your
11 standpoint, you probably want him off and probably
12 neither one of you care where the truth lies from that
13 standpoint. The Court is interested in what the truth
14 is and what is fair play between the defendant and the
15 State and that is all I'm trying to do.

16 MR. FOGLEMAN: Your Honor, I would say for the
17 record the State has every conviction that this
18 defendant is guilty or we wouldn't be pursuing it.

19 THE COURT: I'm sure of that as well. All the
20 platitudes you're making for the record, Mr. Stidham,
21 don't change the circumstances. You've said that
22 enough. You can say it over and over again if you
23 want to.

24 MR. STIDHAM: Thank you for your consideration.

25 (RECESS)

(THE FOLLOWING CONFERENCE WAS HELD IN CHAMBERS)

1
2 THE COURT: Let the record reflect this is a
3 hearing out of the presence of the jury. The purpose
4 of the hearing is to consider the testimony of Doctor
5 Wilkins.

6 MR. STIDHAM: We would like to bring up a couple
7 of points that we didn't discuss earlier before lunch.

8 The Court indicated it would not let Doctor
9 Wilkins testify with regard to cults --

10 THE COURT: I didn't say that.

11 MR. STIDHAM: I thought that's what the Court's
12 ruling was.

13 THE COURT: No, I didn't say that.

14 MR. STIDHAM: Did I misunderstand?

15 MR. CROW: That's the way I took it, too.

16 THE COURT: No. I haven't made any final
17 determination whether or not he testifies about cults.

18 The question is, is whether or not he's competent to

19 testify in that area and that is what the State has

20 raised and that goes to qualifying him as a forensic

21 expert in psychology with special competency in the

22 area of the occult and that is the sole issue.

23 I think the testimony, or at least the

24 conversation we had earlier was relative to him being

25 cross examined if he testifies on matters involving a

1 disciplinary settlement that was made before the
2 licensing board where he signed and somebody for the
3 board signed. That is the real issue.

4 Q You kind of outlined what he was going to testify
5 to with regard to the occult and I might have
6 expressed some question as to whether he was competent
7 in that area, whether or not he had any expertise, but
8 I haven't ruled on it.

9 A So if that's what you want to get into -- I'm
10 more interested right now in the other matter on cross
11 examination. To me that's more significant.

12 MR. STIDHAM: Your Honor, we'd like to have
13 Doctor Wilkins sworn and have him tell the Court what
14 the nature of the disciplinary stuff is so the Court
15 can be informed about that. I have spoken to Doctor
16 Wilkins' attorney, Mr. Crego, and he has brought up a
17 few things I want to make the Court aware of, too.

18 For example, under seventeen -- Arkansas Code
19 Annotated seventeen dash ninety-six dash three ten --
20 as I understand the statute, it says there is no such
21 thing as probation for a psychologist. You either
22 have a license or you don't. You are either in good
23 standing or you've been suspended.

24 Furthermore, it's my understanding that Arkansas
25 is a general licensing state so if you're licensed as

1 a psychologist, you are a psychologist. There's no
 2 license for a specific type of psychology. As I
 3 understand from looking through the file with Mr.
 4 Crow, it would appear that this settlement agreement
 5 was taken in lieu of a formal hearing before the
 6 disciplinary board.
 7 We would submit that because it was in lieu of,
 8 that it is not proper for the State to impeach him on
 9 that. Also, we would submit that it's hearsay. If
 10 the Court determines it is not hearsay, it certainly
 11 hasn't been properly authenticated, and it doesn't
 12 appear to be the original, nor is it attested.
 13 We would also like to have the opportunity for
 14 Doctor Wilkins to explain the nature of the
 15 disciplinary action, what if any action or tarnishment
 16 there is on his record, whether or not he is in good
 17 standing with the board.

18 THE COURT: All right. Go ahead.
 19 DOCTOR WILKINS
 20 having been first duly sworn to speak the truth, the whole truth
 21 and nothing but the truth, then testified as follows:

22 DIRECT EXAMINATION
 23 BY MR. STIDHAM:
 24 Q Can you tell the Court what the basis is for this
 25 settlement agreement in the disciplinary action? I guess you

1 need to start at the beginning.

2 A It began in November of 1990. At that time I was seeing a
3 family with a possibility of some sibling incest. At the time
4 we were dealing obviously with the daughter and son. The son
5 was the perpetrator. Ah, I had contact with the Division of
6 Family Services. I was involved in the normal legal process I
7 had to go through with that.

8 During the course of the assessment with the -- with the --
9 with the girl, we discussed a fair amount of ah -- of ah -- of
10 physiological characteristics that her brother had in terms of
11 determining the veracity of her ah -- ah -- ah -- comment.

12 I checked with the parents about the confirmation of those.
13 They did not know what they were. Ah, so I was in a -- in a --
14 quandary at that point and the -- and the father noted, well,
15 I'll have him pull his pants down and look and see. So he
16 proceeded to do that.

17 Nothing happened then after that for about another six
18 months, ah, at which time these two young people's mother was
19 hospitalized at Charter Lakeside Hospital in Memphis. While she
20 was in the hospital at Charter Lakeside, she happened to raise
21 the issue with Doctor Causey in passing. And then also at that
22 time Doctor Causey became very concerned about the young man
23 that was involved and was insisting that he be hospitalized.

24 At that time -- and depositions are now available for the
25 record -- at that time, ah -- ah -- ah -- both the father and

1 mother signed deposition statements that Doctor Causey told her
2 she could not leave the hospital until she brought her son over
3 there and let them grab him and put him on the unit.

4 When the parents told me of this, I contacted the
5 prosecuting attorney's office. I contacted the attorney
6 general's office and contacted the psychology board with my
7 questions. Ah, I did not get any response. Nothing happened.

8 Ah, a few months later this letter from Doctor Causey came
9 to my board. I responded to the letter. Ah, ten months later
10 nothing happened. Having heard no further response from the
11 board or anyone else, then I got a letter saying they were all
12 concerned about this and they needed to have some kind of
13 resolution.

14 I agreed to do whatever we needed to do to get it resolved.
15 I then asked about my concern involving the kidnapping of the
16 children from Arkansas into the hospital in Memphis. They again
17 chose not to respond.

18 So finally I was left with no alternative but to contact
19 the Children's Defense Fund and the Center for Mental Health Law
20 and the attorney general's office in Tennessee.

21 The attorney general's Office in Tennessee is just
22 completing its evaluation and its charges are pending against
23 Doctor Causey and Charter Lakeside Hospital. The Children's
24 Defense Fund, whatever they are doing for the State of Arkansas
25 or wherever else it may be.

1 We then entered into a settlement agreement. At that time
2 I agreed easier than a whole lot of other complications that I
3 would be supervised for six months, that I would undergo a
4 psychological evaluation. That agreement was formalized. I
5 underwent the evaluation. I met with the supervisor that the
6 board appointed, Doctor Curtis Adkinson. Doctor Adkinson and I
7 met on several occasions. Curtis wrote back to the board saying
8 I didn't need any supervision. He didn't know what to do.

9 We waited then another seven or eight months, got a notice
10 from the board saying that I hadn't followed the outline of the
11 board. During this time I had employed John Wesley Hall. Mr.
12 Hall had written five letters to the board. I had written four
13 letters to the board requesting, what do we do now because the
14 supervisor has quit. Where do we go now. Nine months later
15 still no response.

16 We then had a -- I then got a notice of a board hearing.
17 So we went to the board hearing. At that time it was agreed
18 that if I would agree not to practice neuropsychology, all other
19 things would be left aside.

20 Also at the time we had a discussion that a psychological
21 evaluation would be made of me by Doctor Hazelwood, which by the
22 way, I have sent to five other experts around the country who
23 have made responses that the board now has. I have also
24 pressed malpractice charges against Doctor Hazelwood.
25

And so we are still involved in that process now. Ah, we

1 once were again deciding then what do we do for a supervisor,
2 and do we still have to go through that system. We are still
3 waiting for the board to decide what it is I need to be
4 supervised for and if we ever get that decided, who is going to
5 do it.

6 The board has now taken three and a half years to decide
7 that, which we are no closer now to it than we were when we
8 started three and a half years ago.

9 And that's basically what the process is. At this point
10 there is no such thing as probation. I am not on probation. I
11 have not been told I could not practice forensic psychology. I
12 am licensed to practice in the State of Arkansas as much as
13 anybody else is licensed to practice in the State of Arkansas
14 with the one criteria I do not do neuropsychology and I do not
15 do child sexual abuse cases. Other than that there is
16 absolutely no restrictions to my practice whatsoever.

17 DIRECT EXAMINATION

18 BY MR. CROW:

19 Q Doctor, is Jessie Misskelley's case a child sexual abuse
20 case?

21 A No. The charges are three cases of capital murder I think.

22 Q Would you be treating Mr. Misskelley for any kind of child
23 sexual abuse?

24 A No.

25 Q Have you done any neuropsychology tests on him?

1 A No, I have not. 2

3 MR. CROW: Your Honor, I -- that you felt the

4 BY THE WITNESS: 5 was blackmailing you; is that correct?

6 A May I make one more comment?

7 Q Sure. 8

9 A The issue in Doctor Hazelwood's report regarding my
10 intransigence of ah -- of ah -- of not -- in terms of not
11 allowing things to pass had to do with the fact that I had not
12 yet and still refuse to abandon charges of kidnapping and
13 unlawful taking of patients by Charter Lakeside Hospital. And I
14 will not back off on that so, therefore, I've been declared
15 intransigent, making outrageous statements.

16 Well, I can assure you that the Tennessee attorney
17 general's office and the Children's Defense Fund do not think
18 they are the least bit outrageous. And that's part of the
19 process that we're now involved in.

20 I don't have any -- at this point have -- have -- have been
21 fairly low key about the process. I have no problems with -- at
22 this point. I will deal with it as I have to.

23 When have you had CROSS EXAMINATION in psychology?

24 BY MR. DAVIS: 25

26 Q You referred to Doctor Hazelwood's evaluation; is that
27 correct? 28

29 A Yes. 30 you had any training in the State of Arkansas in the

31 Q In Doctor Hazelwood's evaluation the portions of it that

1 tend to question whether or not you may have certain psychiatric
2 disorders -- those are based on his finding that you felt the
3 doctor in Tennessee was blackmailing you; is that correct?

4 A Yes. you had any in-state training in Arkansas?

5 Q You are also now indicating that Doctor Hazelwood who
6 performed this examination is also blackmailing you also? of

7 A No. Heavens, no. He's not blackmailing me at all. ever your

8 Q You said that he was attempting to get you to drop the
9 charges in Tennessee --

10 A No. I didn't say anything like that at all. tend to

11 Q Does he mention in his report anything about the kidnapping
12 charges? id file one. I'm sorry. I filed one when I first came

13 A Yes. He says they are absolutely outrageous and obviously

14 I -- I -- I have some strange perception of reality because I
15 make these strange outrageous charges.

16 Q Did you also indicate in the transcript of the testimony
17 that as far as any training in forensic psychology in the State
18 of Arkansas that you have had none?

19 A No, I had not. would that you file a letter of intent

20 Q When have you had training in forensic psychology? is?

21 A In the State of Arkansas? stated -- I don't know the exact

22 Q Right. just listed marital, family, individual, productive

23 A I don't know what you're asking me.

24 Q Have you had any training in the State of Arkansas in the
25 field of forensic psychology?

1 A Since I've been in Arkansas I have had training.

2 Q Where, when?

3 A In ah -- ah -- ah -- ah -- Santa Fe, in Dallas, Texas.

4 Q Have you had any in-state training in Arkansas?

5 A No, I have not.

6 Q Have you filed a letter of intent regarding the areas of
7 practice with the Arkansas Board of Psychologists, whatever your
8 governing board is?

9 A No, I have not.

10 Q Isn't a letter of intent in the areas you intend to
11 practice in -- isn't that a requirement?

12 A I did file one. I'm sorry. I filed one when I first came
13 here in 1987, yes.

14 Q What does the letter of intent reflect the scope of your
15 practice is?

16 A Unrestricted.

17 Q In all areas of psychology?

18 A Yes.

19 Q Did the board request that you file a letter of intent
20 regarding the specific areas that you intend to practice in?

21 A Yes. And on that I just listed -- I don't know the exact
22 thing -- I just listed marital, family, individual, productive
23 tests, objective tests.

24 Q When was that?

25 A In 1987.

1 Q Have you filed one since you have been brought before the
2 board?

3 A No, I have not.

4 Q Are you currently supervised?

5 A No. And it's not my fault. I can't get the board to
6 appoint one.

7 Q You've indicated that you're complying with the order in
8 that you're not treating sexual abuse cases, you're not doing
9 neuropsychology, and wasn't the other portion of that order that
10 you be supervised?

11 A But the problem is I can't get them to appoint anybody to
12 supervise. And until they -- and so as far as I can tell, we
13 are still under negotiations for them to decide who it is going
14 to be. So in the meantime --

15 Q If I ask a yes or no, are you currently under supervision,
16 would the answer be no?

17 A No.

18 Q Is the probationary order which reflects that you're not to
19 treat child sexual abuse and not to do neuropsychology, does it
20 also indicate you are supposed to be supervised?

21 A Which order?

22 Q The one that is in effect now.

23 A There are seven in effect as far as I know, none of which
24 -- I haven't decided which ones are in effect and which ones are
25 not in effect. What you have here is about one-fifth of the

1 file or less, probably. I have a transcript --

2 Q Is there an order in effect that requires you to be
3 supervised?

4 A I don't know. I don't know what the order is right now.

5 Q You don't know if you are supposed to be supervised or not?

6 A No. you agreed in the stipulation was to not do child

7 sexual cases? REDIRECT EXAMINATION

8 BY MR. CROW:

9 Q Have you made an effort to try to get a supervisor?

10 A I made an effort to try to get the board to decide who
11 would be appropriate if they still want me to have one.

12 TWO. REDIRECT EXAMINATION

13 BY MR. STIDHAM: one served for what five months --

14 Q Does any of this we just talked about in the record -- has
15 that had any effect on your ability to evaluate Jessie's think
16 Misskelley as far as this murder case is concerned?

17 A No. My thought about that is -- is -- is -- if the board
18 was so concerned about me being mentally unstable and mentally
19 incompetent -- they have had the Hazelwood report since June of
20 1992 -- if they were really concerned -- and since that time
21 I've seen hundreds and hundreds and hundreds of patients -- if
22 they were really concerned about my mental stability, they could
23 have revoked my license as soon as they got the Hazelwood report
24 and so they don't take it very seriously apparently or they must
25 not be greatly bothered by it or else they have had a long time

1 to deal with it if they chose to.

2 Q It is your testimony all these issues remain unresolved?

3 A Yes.

4 REDIRECT EXAMINATION

5 BY MR. CROW:

6 Q What you agreed in the stipulation was to not do child
7 sexual cases?

8 A Yes.

9 Q And to not do neuropsychology and be supervised?

10 A Yes.

11 Q Have you had a supervisor appointed originally?

12 A Two.

13 Q The first one served for what five months -- a highly

14 A Um-hum. And he couldn't get a response from the board as
15 to what he was supposed to do. He finally said, I don't think
16 we need to do anything else. I quit.

17 Q And you made a continued effort since then to have one
18 appointed?

19 A Yes. The second one I chose they said no, he's not
20 appropriate. He was the last chairman of the board so I'm not
21 sure exactly what their issue is they're trying to deal with at
22 this point.

23 THE COURT: Anything else, gentlemen?

24 MR. STIDHAM: Your Honor, I would point out that
25 the statute seems to indicate you either have a

1 license or you don't, and it seems to be obvious that
2 Doctor Wilkins does have a license, and all these
3 issues regarding supervision are still out there to be
4 decided.

5 I have serious reservations as to whether or not
6 due process has been afforded on those issues. I
7 don't think I have a reservation with regard to child
8 sex abuse cases, but that's not what we are talking
9 about.

10 THE COURT: I don't have any question but what
11 due process was provided. Doctor Wilkins has even
12 indicated that he had John Wesley Hall, and everybody
13 in the room knows John Wesley Hall to be a highly
14 competent attorney that represented him at the hearing
15 wherein the probationary order was entered.

16 It also seems to refer to the section you have
17 quoted seventeen ninety-six three ten -- refers to
18 seventeen ninety-three four ten of the Medical
19 Practices Act which provides that, "The board may
20 impose probation allowing a licensee to continue
21 practicing under terms and conditions found to be in
22 the best interests of the accused and general public."

23 Further, seventeen ninety-six three ten provides
24 that, "The Arkansas Board of Examiners in Psychology
25 may refuse to grant a certificate or may recommend

1 suspension of any license for a period to be of the
2 determined by the board." about the evaluation?

3 And also, seventeen ninety-six three eleven seems
4 to indicate that they may enter any appropriate order
5 or ruling.

6 As far as I'm concerned, you are just talking?
7 Yes. about the good doctor did quite a bit in explaining so
8 I'm going to allow him to testify, and I am going to
9 allow them to cross examine, and he may make
10 explanations that he deems appropriate. 't think he's

11 had I'm not going to let him go into stripping a kid
12 off and exposing his privates, and I'm not going to
13 allow Doctor Hazelwood's letter to be introduced and
14 received in evidence as an exhibit. I will, however,
15 allow them to make reference to it, show it to Doctor
16 Wilkins and cross examine him appropriately without
17 detailing the contents of the letter to the jury.

18 MR. CROW: Can I get a little further your client
19 understanding as to -- I'm sorry, your Honor. Maybe
20 I'm being ignorant. of circumstances.

21 THE COURT: It should be pretty clear by now.

22 MR. CROW: Maybe it should be. I apologize to
23 the Court. It's what are they going to be allowed to
24 do with this evaluation. That's my big concern at
25 this point. ter of cross examination.

1 MR. STIDHAM: Your Honor, may I inquire of the
2 witness a further question about the evaluation?

3 THE COURT: Sure.

4 REDIRECT EXAMINATION

5 BY MR. STIDHAM:

6 Q Isn't that evaluation the subject of the pending hearing?

7 A Yes.

8 MR. STIDHAM: Your Honor, that's still pending.

9 To let the prosecution impeach him with that,
10 something that is still pending. I don't think he's
11 had due process with regard to that. That hasn't been
12 resolved by the board yet.

13 THE COURT: Again, I'm going to allow them to ask
14 him questions that go to his professional
15 qualifications, his credibility, that present
16 themselves. I'm not going to allow them to embarrass
17 Doctor Wilkins. I'm not going to allow them to go
18 into matters that would be prejudicial to your client.
19 But I am going to allow them to cross examine him
20 based upon this set of circumstances.

21 Do you understand what I'm saying about the
22 letter from Doctor Hazelwood? I don't want that
23 bantered back and forth in front of the jury. There
24 are pertinent matters in it that would be proper
25 subject matter of cross examination.

1 MR. DAVIS: Judge, one thing I'd like to point
2 out for the record is that letter is the report based
3 on the evaluation that was part of the agreed court
4 order that contained also the terms of not examining
5 sexual abuse victims and also the neuropsychology so
6 that report is tied into the very order we are
7 referring to. letter from Doctor Hazelwood but he is

8 THE COURT: I understand that. To that extent
9 you probably could refer to it. That is a report that
10 is based upon the agreed order that was entered by the
11 Court. That is about as far as you can go. What's
12 pending now -- those type things -- if Doctor Wilkins
13 wants to explain it, fine. I frankly don't see what
14 is so disturbing about his testimony. He did a pretty
15 darn good job of explaining what it's all about. But
16 the fact is that all of us have to explain things from
17 time to time. I'd like to bring for the Court

18 THE WITNESS: I don't have any problem with
19 having a press conference right now explaining that.

20 THE COURT: I'm not requiring you to do anything
21 like that. response to the Hazelwood report.

22 THE WITNESS: I have no problem in explaining
23 that.

24 THE COURT: There was some reference made this
25 morning that you gave about an hour or two press

1 conference to some TV station. I don't know whether
2 that's true or not.

3 THE WITNESS: I talked to people at KAIT about
4 some other issues.

5 MR. STIDHAM: The only thing I'm not
6 understanding -- he's not going to be allowed to
7 introduce the letter from Doctor Hazelwood but he is
8 going to be allowed to ask the witness to read it to
9 the jury?

10 THE COURT: He's going to be allowed to refer to
11 that letter as a part of the settlement agreement, ask
12 Doctor Wilkins to refer to it and then ask pertinent
13 questions concerning it. But the letter will not be
14 received in evidence.

15 THE WITNESS: My one response to that if it is
16 possible since I'm going to respond to that, I have a
17 pile of material I'd like to bring for the Court
18 hearing as I would not have that with me. If I'm
19 going to testify this afternoon, I don't have the
20 responses that I'm going to make to that. I have a
21 nineteen page response to the Hazelwood report.

22 THE COURT: What is it you want to ask him out of
23 the letter?

24 MR. DAVIS: Judge, there's a number of items. It
25 depends on how the cross examination goes. They've

1 already seen the portions I've highlighted. I just
2 don't feel like sitting here telling the witness what
3 I intend to cross examine him on. then cross examine
4 him. THE COURT: I understand that. I don't guess
5 Doct MR. STIDHAM: What about our objection to hearsay
6 and proper authentication of the document? he didn't
7 have MR. FOGLEMAN: We are not introducing the it.
8 document. had been a situation where he had been
9 accus THE COURT: I'm not going to allow them to fore a
10 introduce them. never had those issues resolved.
11 like MR. STIDHAM: Judge, if they're sitting there any
12 telling the jury what is in the document, it is the
13 same thing as introducing the document. ad an
14 adjus MR. CROW: If Doctor Hazelwood is not here to d
15 testify, your Honor, that's not an authenticated copy
16 of anything that's in the file in Little Rock -- John
17 Repla THE COURT: I'm not going to let Doctor lawyer of
18 Hazelwood's letter be received anyway so it's not a
19 question of authenticating the document. But you will
20 have a witness on there that can be confronted with it
21 and asked if he recognizes it, if he knows what it is
22 and you can proceed to ask him questions about it. he's
23 going MR. STIDHAM: I anticipate calling Doctor Wilkins
24 then first thing in the morning and give him an
25 opportunity to get the documents he needs to defend

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himself on cross examination with regard to these issues. some of the contents of the letter are

THE COURT: I'm going to let them cross examine him. I didn't create the situation. I don't guess Doctor Wilkins created it, but he lives with it, and we are going to all live with it. He says he didn't have any trouble explaining it, then let him do it.

If it had been a situation where he had been that accused of some wrongdoing and had never gone before a hearing tribunal, never had those issues resolved, like I was led to believe, I would have prohibited any inquiry into it at all. But that's far from the case.

one The fact of the matter is, is he had an script is adjudicative hearing for which a record was made and sworn testimony taken and he not only had one lawyer but had two lawyers present, as I recall. And John Wesley Hall, a former prosecutor, a defense lawyer of some renown, representing him. So whatever occurred there is free game. the transcript carefully.

MR. CROW: I don't have any objection to what that occurred in that hearing. My objection is that that evaluation that has nothing to do with the issues he's going to testify about. I'm looking at, too.

THE COURT: I'm not going to allow the jury introduction of that letter into evidence, but I think

1 as it dovetails and ties into the probation order
2 itself, some of the contents of the letter are
3 certainly available for the State to cross examine on,
4 such as competency in the area of forensic
5 psychology and that is one of the issues. But I think
6 that is certainly an issue in this case -- his
7 credibility in that area.

8 MR. STIDHAM: Your Honor, that is the issue that
9 is coming up for the pending hearing. That hasn't
10 been adjudicated.

11 MR. CROW: Your Honor, the only thing that has
12 been adjudicated was the stuff that happened in the
13 one order. The other hearing that the transcript is
14 there for, if you will read the transcript carefully,
15 your Honor, you'll see -- they basically talked and
16 talked and finally said, we will meet again. No
17 decision was made. No additional restraints were put
18 upon him. They talked and talked and talked. I ask
19 the Court to review the transcript carefully.

20 THE WITNESS: I think the transcript I have that
21 I paid three thousand dollars for -- a transcript that
22 is this high (INDICATING) for this hearing. There's
23 another transcript that I'm looking at, too.

24 MR. STIDHAM: We are concerned about the jury
25 being confused about the issues and what issues have

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been resolved and what issues haven't been resolved. And I just think it's patently unfair for the State to be allowed to impeach or cross examine him on something that hasn't been adjudicated yet by the board.

THE COURT: I'm going to let him cross examine him on the matters that were raised in the adjudicative hearing for which there was a probationary order entered. I'm finding that a probationary order was completely within the powers and responsibilities of the board to enter, and Doctor Wilkins has conceded that he signed it and agreed to it. That is basically what we're here for.

I have called and if you want another psychologist, the State Hospital in Jonesboro can give an IQ examination. It will take more time to do a forensic study if you want that done. That's an opportunity you can have between now and tomorrow.

But otherwise -- and I have nothing against Doctor Wilkins at all -- but I think he understands better than some of you in this room that he's prepared and capable to explain away the possible cross examination. It is there. It isn't going to go away. I didn't create it and you didn't create it. He didn't either. He's got to live with it. And he

1 got due process. That's the only thing I'm concerned
2 about. I want Mr. Misskelley to have due process. But,
3 on the other hand, I'm not going to unduly restrict the
4 State's ability to cross examine the witness.

5 MR. STIDHAM: Thank you, your Honor. to this guy's
6 measurements. (RETURN TO OPEN COURT.) object to because

7 they MR. STIDHAM: Your Honor, may we approach the bench?

8 THE COURT: Okay. Honor, they won't mislead the
9 jury. (THE FOLLOWING DISCUSSION WAS HAD AT THE BENCH OUT
10 OF THE HEARING OF THE JURY.) object to them when he gets

11 ready MR. FOGLEMAN: Your Honor, we've already stated in
12 chambers that we would renew our objections to these
13 photographs that were just taken a few weeks ago because
14 they do not depict the scene as it was on -- on the day
15 of the murders. ly sworn to speak the truth, the whole

16 truth, and MR. CROW: I think they can help them explain what
17 you can and can't see from certain places.

18 BY MR. STIDHAM: MR. FOGLEMAN: But you can see some things---

19 Q. Please THE COURT: Well, you're going to have to point out
20 all of the variables about the seasons of the year and
21 all---at do you do for a living, Mr. Tax?

22 A. I am MR. FOGLEMAN: Why can't he use the crime scene
23 photographs? you reside?

24 A. MR. STIDHAM: They're not the right angles, your
25 Honor. u have an office in Memphis. Is that correct?

1 A. THE COURT: What do you mean "not the right angles"?

2 Q. MR. STIDHAM: The points that we're trying to make,

3 your Honor, is how far it is from where the bodies were

4 located to the service road, to the interstate.

5 MR. DAVIS: We've agreed to stipulate to this guy's

6 measurements. It's the photographs we object to because

7 they -- they will mislead the jury. (HANDING TO

8 WITNESS.) MR. STIDHAM: Your Honor, they won't mislead the

9 jury.

10 Q. THE COURT: Well, just object to them when he gets

11 ready to introduce them and let me look at them and then

12 I'll make a decision.

13 Q. I'm sorry? (RETURN TO OPEN COURT.)

14 A. Monday, a week ago. RON LAX

15 having been first duly sworn to speak the truth, the whole

16 truth, and nothing but the truth, then testified as follows:

17 to the interstate highway. DIRECT EXAMINATION

18 BY MR. STIDHAM: taken from where the bodies were discovered

19 Q. Please state your name for the Court.

20 A. Ronald L. Lax.

21 Q. And what do you do for a living, Mr. Lax?

22 A. I am a private investigator.

23 Q. And where do you reside?

24 A. Memphis, Tennessee.

25 Q. And you have an office in Memphis. Is that correct?