

1 A. That's correct.

2 Q. Isn't it customary, Inspector Gitchell, to when you get
3 on a tape to announce what date it is, what time it is, the
4 tape was turned off---

5 A. That would be customary---

6 Q. Let me finish my question, please.

7 A. Well, I was going to answer the first part.

8 Q. Isn't it customary that when you stop the tape, you
9 announce what time it is and when you go back on tape, you
10 announce what time you begin again?

11 A. That's customary in this type of statement which we did
12 do that. However, this -- the only reason I did this tape was
13 to verify because I be -- I was sure nobody would believe what
14 I would be saying, so that's why I carried the tape in with
15 me.

16 MR. STIDHAM: Nothing further.

17 MR. FOGLEMAN: I don't have any further questions.

18 (WITNESS EXCUSED.)

19 THE COURT: Call your next witness.

20 MR. DAVIS: Your Honor, the State would call Doctor
21 Vaughn Rickert.

22 THE COURT: Doctor, you were previously sworn.

23 THE WITNESS: Yes, sir.

24 DOCTOR VAUGHN RICKERT

25 having been previously sworn to speak the truth, the whole

1 truth, and nothing but the truth, then further testified as
2 follows:

3 DIRECT EXAMINATION

4 BY MR. DAVIS:

5 Q. Would you state your name, please, sir?

6 A. Vaughn I. Rickert.

7 Q. And, Mr. Rickert, where are you employed?

8 A. I'm employed by the Department of Pediatrics at the
9 University of Arkansas for Medical Sciences and also
10 affiliated staff with Arkansas Children's Hospital.

11 Q. And in what capacity are you employed there?

12 A. I'm employed as a clinical psychologist more known as the
13 pediatric and adolescent psychologist and an associate
14 professor of pediatrics.

15 Q. And could you explain to us briefly what you do in that
16 job as a pediatric and adolescent psychologist with the
17 Arkansas Children's Hospital?

18 A. My role is threefold. My first role is providing
19 clinical service where I diagnose and treat children and
20 adolescents who may have diagnosable disorders of substantial
21 psychological difficulties in terms of both evaluations and
22 treatment.

23 My second role is to do and conduct research and my
24 research interests are in adolescent medicine issues
25 particularly revolving around adolescent substance use and

1 various health related behaviors that adolescents might engage
2 in which could compromise their health in the future.

3 My third role is to do teaching to provide education to
4 pediatric residents and medical students surrounding child and
5 adolescent development and treatment and diagnosis issues that
6 may help them in their practice of pediatrics.

7 Q. Now, when you refer to adolescents -- just so we
8 understand -- what age group are we talking about?

9 A. Adolescents generally refer to individuals between the
10 ages of twelve to twenty-one.

11 Q. Okay. Now, could you briefly tell us about your
12 background, education, training, and experience in this
13 particular field?

14 A. Yes. I received my Bachelor's Degree in psychology from
15 Michigan State University in nineteen seventy-seven. I went
16 to graduate school to get a Masters and Specialist Degree in
17 school psychology. School psychology is the sub-speciality of
18 psychology looking at psychological processes and difficulties
19 that children experience within a school setting.

20 After working professionally for three years in that
21 field, I went back to get my Doctoral Degree in professional
22 psychology in -- and specializing in clinical type psychology.
23 As a part of the degree requirements, you were required to do
24 a full time internship which I did at Johns Hopkins University
25 School of Medicine in Baltimore. After completing that

1 internship, I graduated and was awarded a degree and was
2 employed at the University of Arkansas for Medical Sciences in
3 nineteen eighty-six.

4 Most recently I have been awarded fellow status in the
5 Society of Adolescent Medicine which is a elected title to
6 indicate substantial contributions in the area of adolescent
7 health and medicine.

8 Q. And is that an award that you received or an honor that
9 you received that's based on your scientific achievements?

10 A. Yes. Yes. It's directly related to my scientific
11 contributions to the field as well as my educational effort
12 within the society.

13 Q. Now, could you tell us kind of what -- what a general
14 difference between psychology and sociology is?

15 A. Generally, the field while related focus on differences.
16 In psychology you are typically taught and evaluate children
17 -- particularly in a clinical area -- looking at mind-body
18 relationship and more particularly psychological processes
19 like processes and things of that nature, but it's definitely
20 looking at the individual person, child, or adult.

21 Sociology, while they may be concerned with individual
22 behaviors, it's more recognized looking at groups of people.
23 So within both fields there are some overlaps but within the
24 areas of clinical psychology particularly, you are trained to
25 treat and diagnose individuals which is not something that

1 sociologists would be trained to do.

2 Q. Now, as part of your job with the Children's Hospital, do
3 you review evaluations performed by other doctors to determine
4 the significance of those evaluations and also what further
5 things might be done in regard to a particular patient?

6 A. Yes, that's part of my standard procedure.

7 Q. Okay. And in doing those evaluations are you familiar
8 with some of the tests that were referred to by Doctor Wilkins
9 during his testimony?

10 A. Yes, I am.

11 MR. DAVIS: Your Honor, at this time we would submit
12 Doctor Rickert as an expert in the field of adolescent
13 psychology.

14 THE COURT: Do you want to take him further?

15 MR. CROW: No, your Honor.

16 THE COURT: Alright, you may proceed.

17 BY MR. DAVIS:

18 Q. Now, Doctor Rickert, what have you examined or looked at
19 prior to coming here to testify today?

20 A. I have reviewed Doctor Wilkins' psychological report and
21 also I have reviewed an attached transcript that he was
22 testifying to in November and December, I believe.

23 Q. And those were hearings in this matter -- previous
24 hearings in this matter?

25 A. Yes, they were.

1 Q. Okay. And were you also present for the majority of
2 Doctor Wilkins' testimony yesterday?

3 A. Yes, I was.

4 MR. STIDHAM: Your Honor, may counsel approach the
5 bench?

6 THE COURT: Yes.

7 (THE FOLLOWING DISCUSSION WAS HELD AT THE BENCH OUT
8 OF THE HEARING OF THE JURY.)

9 MR. STIDHAM: Judge, he's not going to be allowed to
10 testify about Doctor Wilkins' evaluations, is he? Doctor
11 Wilkins' own evaluation, not the evaluation of the
12 defendant.

13 MR. DAVIS: No. No. No. No.

14 THE COURT: No. No. You're talking about -- no.

15 MR. DAVIS: I didn't even -- I'm not going into
16 that.

17 MR. STIDHAM: I just wanted to make sure. I just
18 wanted to make sure. Thank you, your Honor.

19 (RETURN TO OPEN COURT.)

20 BY MR. DAVIS:

21 Q. Just to clarify something, Doctor Rickert. When you said
22 that you had reviewed an evaluation, it's Doctor Wilkins'
23 evaluation of this defendant, correct?

24 A. Yes, that is correct.

25 Q. Okay. Now, let me ask you: Have you ever done any work

1 as a professional witness before?

2 A. No, I have not.

3 Q. How much income did you receive last year as a
4 professional witness?

5 A. I received zero dollars.

6 Q. Okay. And have you received or have you been promised
7 anything to come testify here today?

8 A. I have not been promised anything.

9 Q. Now, first off, let me ask you: Are the tests -- the
10 standardized tests that Doctor Wilkins referred to in his
11 report, are they based on scientific methods?

12 A. Some of them are.

13 Q. Okay. Can you explain for us what scientific methods
14 means and why it's important?

15 A. When looking at a way a person responds or the score that
16 one gets on a particular instrument, we want to make sure that
17 that score would happen again and again and again or that the
18 test is reliable. What you get the first time is likely what
19 you would get the second or third time.

20 In addition you always -- you also want to make sure that
21 the test is valid. That is what it says it's supposed to
22 measure is in fact what it measures. Obviously in the field
23 of psychology and in mental health some of the things that we
24 discuss and try to make attributions to are very complicated
25 and are not very simple.

1 As a result, tests which are standardized and normed
2 provide very useful information because as a part of the
3 scientific method these tests have been given to a large
4 number of individuals from various different parts of the
5 country at various ages. So that a -- so that a person who is
6 thirteen you are comparing to other people within that sample
7 who are also thirteen to look at the way in which they
8 responded to get some index of the difference from normal
9 versus abnormal -- high or versus low.

10 In contrast there are some instruments which don't have
11 this amount of information and so you're generally limited to
12 the kinds of inferences that you can draw because we are
13 unsure or it has yet to be demonstrated that the results you
14 got today is the same results you would get next week or next
15 year.

16 Q. Is that -- is that why it's important in all fields of
17 science or studies that tests be based on proper scientific
18 methods?

19 A. In order to draw accurate conclusions, that is definitely
20 important.

21 Q. Okay. And you listened to the testimony of Doctor
22 Ofshe---

23 A. Yes.

24 Q. ---or Mr. Ofshe yesterday. Was there any -- did you hear
25 anything that he testified to that related to or indicated

1 there was any scientific methods from which he drew his
2 opinion?

3 A. No, I did not hear any such---

4 MR. STIDHAM: Your Honor, I would object to that. I
5 don't of any -- this witness is not an expert in the same
6 field as Doctor Ofshe is and now he's going to get up
7 there and say things about Doctor Ofshe -- not scientific
8 methods not being there. He doesn't know anything about
9 that.

10 MR. DAVIS: Your Honor, I think he -- I can clarify
11 this.

12 THE COURT: Alright.

13 BY MR. DAVIS:

14 Q. Does the science -- no matter what field you're working
15 in -- scientific methods in order to determine the accuracy of
16 your results is the same whether it's in biological science or
17 whether it's in psychology, correct?

18 A. That's correct.

19 MR. STIDHAM: Your Honor, again, my objection is
20 this witness is not qualified to challenge something
21 outside his field. He shouldn't be allowed to testify
22 about things he has no knowledge of. This is the same
23 witness who was on the stand yesterday saying he'd never
24 heard of the---

25 MR. DAVIS: Your Honor---

1 MR. STIDHAM: ---Gudjonsson Scale of Suggestibility.
2 And again I would submit---

3 MR. DAVIS: Your Honor---

4 MR. STIDHAM: ---that he knows nothing about that
5 area.

6 MR. DAVIS: Excuse me. But if he's going -- if he's
7 going to give a dissertation to the jury, then we're
8 going to need to go back in chambers. If he's going to
9 make objection, then I can respond.

10 MR. STIDHAM: I just made my objection, your Honor.

11 THE COURT: Alright, respond.

12 MR. DAVIS: Your Honor, my response is that he has
13 testified that the scientific methods upon which any
14 theory -- the reliability of any theory is based is the
15 same no matter what field it's in.

16 THE COURT: Alright, ask him to describe what we
17 mean when we say "scientific methods". Alright, and then
18 -- I'm going to overrule your objection temporarily.

19 BY MR. DAVIS:

20 Q. Doctor, what is scientific method or can you describe
21 that for us as simple as possible?

22 A. Basically what you're looking at is the reliability and
23 the validity or the accuracy of getting the same results time
24 over time and being recorded the validity, that is the
25 truthfulness of a response or a particular result. In the

1 case of biology making sure that when you treat someone with
2 an antibiotic that in fact that they get better. If you would
3 do that over and over again, you would get the same results.
4 Generally that's accepted scientific methods.

5 MR. STIDHAM: Your Honor, again my objection is this
6 witness doesn't know anything about what Doctor Ofshe was
7 testifying about yesterday. He stated on the -- this is
8 the same guy who was on the stand yesterday I do believe
9 and said he had never heard of the suggestibility scale
10 by Doctor Gudjonsson. That's---

11 MR. FOGLEMAN: That's because it's not
12 scientifically recognized.

13 MR. STIDHAM: No.

14 THE COURT: Okay. You all have editorialized enough
15 now. I think I've got the picture.

16 Alright, Doctor, based upon your education,
17 training, and experience, do you have an opinion as to
18 the scientific reliability of -- what did we call that?

19 MR. STIDHAM: Gudjonsson Suggestibility Scale.

20 THE COURT: Yes.

21 MR. FOGLEMAN: Your Honor, that wasn't the question
22 that was asked. The question that was asked is whether
23 during the -- Mr. Ofshe's testimony what was---

24 MR. STIDHAM: Doctor Ofshe.

25 MR. FOGLEMAN: Can you treat a broken arm with your

1 mind?

2 MR. STIDHAM: Is this gentleman---

3 MR. CROW: Is this gentleman---

4 THE COURT: --Alright, I'm not going to put up with
5 that. We've been here too long for that kind of stuff
6 now. State your objection.

7 MR. STIDHAM: Your Honor, may I voir dire the
8 witness about his knowledge---

9 MR. FOGLEMAN: Your Honor, I'm---

10 THE COURT: In just a minute maybe. Go ahead.

11 MR. FOGLEMAN: Your Honor, the question was: Is
12 whether or not during the testimony of Mr. Ofshe that
13 there was any scientific basis given for the conclusions
14 that he drew.

15 MR. STIDHAM: He don't know that, Judge.

16 MR. FOGLEMAN: Well, he heard the testimony.

17 THE COURT: I'm going to allow him to give his
18 opinion in that regard.

19 BY THE WITNESS:

20 A. I did not hear any report as to if the same procedure was
21 applied by himself or someone else that he may have trained,
22 that he would arrived at the same conclusions.

23 Q. And in the scientific community if you want to have your
24 theory accepted as valid, what do you do?

25 A. Typically what is done and it's the customary procedure

1 that you write up the results of your study. You describe
2 what you did, what results you're having, what you believe are
3 the implications, and you submit that paper to a scientific
4 journal in your field or in a related field where it is
5 reviewed by other peers, that is, other colleagues with
6 similar training -- not necessarily similar views -- and based
7 upon that review your paper and your results are either
8 accepted or rejected.

9 In addition what one typically does as well is send in a
10 very short description of your paper and your findings to
11 professional societies who have people who review to determine
12 whether or not the scientific method is worth reporting and
13 the results worth reporting and they might invite you or may
14 choose not to invite you to present your findings at a
15 scientific meeting.

16 Q. Was there anything in Doctor Ofshe's testimony yesterday
17 that indicated that his theories had been published in any
18 accepted peer review articles?

19 A. I did not hear any evidence of that.

20 Q. Now, is a Pulitzer Prize, does that have any -- is that
21 an award given for scientific achievements?

22 A. No, it is not.

23 Q. And would that have any more to do with the
24 qualifications of a sociologist than the Heisman Trophy?

25 A. It would not.

1 Q. Now, you have reviewed the tests and the report of Doctor
2 Wilkins and I would first like to bring your attention to the
3 I. Q. test that he's used. Which one was that?

4 A. That was the Wechsler Adult Intelligence---

5 MR. STIDHAM: Your Honor, may counsel approach the
6 bench?

7 THE COURT: Yes.

8 (THE FOLLOWING DISCUSSION WAS HELD AT THE BENCH OUT
9 OF THE HEARING OF THE JURY.)

10 MR. STIDHAM: Has this doctor examined my client,
11 your Honor?

12 THE COURT: I don't know that he -- that he needs
13 to. He can refer to the report and give his opinion
14 based upon a report and data. You made that same
15 objection the other day. I'm going to allow him to do
16 that and that's what he can do.

17 MR. STIDHAM: Your Honor, we would ask that the jury
18 be instructed to disregard his testimony regarding Doctor
19 Ofshe. He's not an expert in the same field as Doctor
20 Ofshe and his stuff about scientific methods in biology
21 have nothing to do with the testimony.

22 THE COURT: A scientific method is a concept and
23 it's used in mathematics. It's used in engineering.
24 It's used in -- it's used in every field. A scientific
25 method is something that any educated person that employs

1 the scientific method can give an opinion and in my
2 opinion this conforms to the norm of the scientific
3 method and that's really all that he's done.

4 MR. STIDHAM: Thank you, your Honor.

5 (RETURN TO OPEN COURT.)

6 BY MR. DAVIS:

7 Q. Doctor, which one was the I. Q. test that was performed?

8 A. The Wechsler Adult Intelligence Scale Revised.

9 Q. Okay, and do you recall what the results of those tests
10 were -- the ones that Wilkins performed?

11 A. I recall that Mr. Misskelley's score was in the
12 borderline range and that with the exception of two of the ten
13 sub-tests, his scores were in the lower range of -- in the
14 borderline range essentially.

15 Q. And did you also review where it indicated that he had
16 performed and scored eighty-eight and eighty-four on previous
17 I. Q. tests?

18 A. Yes, I did.

19 Q. And that would have been in performance?

20 A. Right. In terms of the background information that was
21 provided in this report it was evident that Mr. Misskelley had
22 -- the intelligence scale is comprised of two portions -- a
23 verbal portion where you're asked questions and expected to
24 answer, and a performance portion where you're expected to
25 listen to the instruction at the same time you're being shown,

1 but to solve problems using your eyes and hands.

2 The performance pattern that was reported in Doctor
3 Wilkins' report indicated that Mr. Misskelley's ability to
4 solve problems using his eyes and hands was in the average
5 range whereas when he was asked questions or -- of a verbal
6 nature such as defining words or telling how two words or
7 concepts are similar, was markedly below that and in the
8 borderline range.

9 Q. Now, what -- what does your success in school or book
10 learning have to do with how you score on an I. Q. test?

11 A. Well, certainly they're related and, in fact,
12 historically the I. Q. test was developed in order to separate
13 out children who may profit from education versus children
14 that they thought would not profit from education -- although
15 we know that that's not true today.

16 So there is a very high relationship between individual
17 children and adults who did very well in school and their
18 overall intelligence because they are very related things --
19 particularly on the verbal portions of the instrument. As you
20 age you get more and more of those concepts or you have more
21 and more opportunity to hear information that may be related
22 to particular questions or similar questions that you would
23 experience on an I. Q. test.

24 Q. And if somebody has an average performance level and
25 ranks in the average range on performance, yet ranked markedly

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1 lower in verbal I. Q., could that be a result of---

2 MR. CROW: Object to leading, your Honor.

3 BY MR. DAVIS:

4 Q. ---what would that have to do with academic---

5 THE COURT: Overruled.

6 BY MR. DAVIS:

7 Q. ---training?

8 A. I would expect, as I think many of my colleagues would,
9 that a lower score on the verbal portion could indicate a
10 number of things. It could indicate someone who had
11 difficulties in recalling information that was presented in
12 school, that if they probably didn't -- may not be doing well
13 in school. It could also be due to emotional difficulties.
14 We sometimes find that scores are suppressed in the verbal
15 because of emotional difficulties as well as language
16 difficulties. And in -- also in conclusion that the test
17 while it tries to be fair to all children and adults in this
18 particular case, people who have been deprived of similar
19 opportunities do as a result score lower than their estimated
20 abilities might be if we could get an unbiased estimate.

21 Q. So is there much correlation between that verbal I. Q.
22 and how you're able actually to function or street smarts?

23 A. There may be some relationship as well as there may be
24 very little relationship. For example, one of the things that
25 you want to discern -- particularly in the case where you're

1 looking at an individual being considered for special
2 education purposes as a handicapped individual is to make sure
3 that they're functioning on a day-to-day level is commensurate
4 with their overall intelligence. In some cases it is and in
5 other cases it is not and so you want to see how well they
6 communicate their needs and wants on a daily basis to people
7 around them, what their ability to relate to other people is,
8 get some estimate of their ability to take care of themselves
9 -- fix themselves dinner for example for older individuals.
10 For younger individuals and children it might be how well they
11 are to take a bath, to dry themselves, to wipe themselves and
12 the like.

13 So you want to get some frame of reference to talk about
14 an individual's ability in daily life situations by measuring
15 their adaptive behavior.

16 Q. And in your practice have you dealt with numerous people
17 in the adolescent age group that had I. Q. scores similar to
18 what you see in this particular case?

19 A. I have.

20 Q. Okay, and are those people as a general rule able to
21 function and -- and interact in society?

22 A. They certainly are, but the quality of those interactions
23 may be different among different individuals, but generally
24 they can be expected to function.

25 Q. Now, there was -- Doctor Wilkins had some Play Doh out

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1 and did what he called Piaget's Conservation of Matter Test.
2 What -- what did that indicate if somebody looked at two balls
3 of clay and one is rolled out long wise and one is left in a
4 ball -- what is that test designed to show us?

5 A. The test is an effort to demonstrate Piaget's concepts.
6 Not to belabor the Court and certainly your Honor, but Piaget
7 was a developmental psychologist who was looking at the
8 development of thinking skills from very young and as children
9 age.

10 Then he proposed that individuals went through certain
11 stages of thinking ability. That particular instrument is a
12 test that is designed to determine whether or not an
13 individual knows that just because two things don't look
14 exactly the same they may be in fact the same thing.

15 It was widely thought and held years ago that as
16 individuals age that they went through these stages and
17 everybody went through them from being very -- very, very
18 concrete or what we call preoperational, really not
19 understanding cause and effect, to being fairly concrete to
20 the last stage which was formal -- ah -- formal abstraction.
21 That is the ability to make plans and deal with future things
22 much like people do in calculus and engineering dealing with
23 concepts that they can't see or put their hands to.

24 However, we have found through the course of science --
25 and particularly with this particular theory -- that only

1 about fifteen percent of the population achieves this notion
2 of formal abstract thinking. And in fact many people are
3 concrete thinkers.

4 Q. Was that fifteen percent?

5 A. Fifteen percent of the population is estimated to thought
6 -- to be believed to have developed this notion of formal
7 abstract thinking that Piaget proposed.

8 Q. Okay, so basically what Wilkins was saying was that this
9 defendant is a concrete thinker?

10 A. Yes.

11 Q. Okay, and eighty-five percent of the population are
12 concrete thinkers?

13 A. Of one sort or another, yes.

14 Q. Now, you deal -- when you deal in therapy with
15 adolescents are you -- is your job in therapy to try to
16 persuade them or even suggest to them changes in their conduct
17 and changes in their behavior?

18 A. It certainly is a part of the therapeutic interlude to
19 offer suggestions and to provide comment to what they seem to
20 be doing. The purpose of therapy or coming into therapy
21 whether the adolescent him or herself comes to you and says, I
22 have a particular problem, or the parent suggests that there
23 is a particular problem, the point of therapy is to try to
24 improve the situation both to the adolescent as well as his
25 immediate family.

1 Q. And it is -- is the real goal of therapy to persuade them
2 or convince them in a clinical setting that they should modify
3 their conduct?

4 A. Yes, it is.

5 Q. And modify their behavior?

6 A. Right. If they want to experience those kinds of---

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

8 (THE FOLLOWING DISCUSSION WAS HELD AT THE BENCH OUT
9 OF THE HEARING OF THE JURY.)

10 MR. STIDHAM: Judge, this has been a long trial and
11 it's going to be longer. What does that have to do with
12 anything?

13 MR. CROW: Doctor Wilkins was not his therapist.

14 MR. DAVIS: Do what?

15 MR. STIDHAM: What -- what does that have to do --
16 any relevance to this case?

17 THE COURT: Are you making an objection to
18 relevancy?

19 MR. CROW: Yes, sir, I'm making an objection to
20 relevancy.

21 THE COURT: I don't know. What is the relevancy of
22 that line of questioning?

23 MR. DAVIS: Your Honor, I think he's experienced
24 with people in a therapeutic setting where his very goal
25 was to modify and change and suggest changes in their

1 attitude and I think he can describe what the reaction of
2 even low functioning people are. That they can react
3 belligerently, they can deny any effort at changing their
4 mind or their thought processes or actions. We've been
5 given the impression that just because you have a low I.
6 Q. that if somebody suggests something to you, you dive
7 out the window to try to do it.

8 THE COURT: Alright, I'm going to allow it.

9 MR. CROW: Your Honor, our objection would be that
10 all the testimony hasn't been that everybody with a low
11 I. Q. is that way, it's just what possibly these people
12 are more---

13 THE COURT: --He's -- well, I know it, but I think
14 he can give the different possibilities and that's what
15 he's trying to do.

16 (RETURN TO OPEN COURT.)

17 THE COURT: Go ahead.

18 BY MR. DAVIS:

19 Q. Doctor, these -- these people that you deal with in
20 therapy frequently have I. Q. levels about the same as this
21 defendant?

22 A. Um-hum. Yes.

23 Q. And in therapy your goal is to suggest to them a change
24 in behavior many times.

25 A. Right, and hopefully have them come to believe when they

1 try out the behavior that it produces positive results or in
2 some cases they don't receive the kind of comments or
3 unpleasant consequences that they have been experiencing
4 before.

5 Q. And -- and really the design of the therapy is to kind of
6 manipulate them into doing what's beneficial to them, correct?

7 A. Yes, that is -- that is -- that could be considered one
8 of the goals.

9 Q. Do people with low I. Q.'s similar to this defendant ~~*~~
10 is it -- or do they manipulate just like that? I mean, are
11 they easily suggested or is their behavior and attitude
12 changed?

13 A. Yes. That's -- people can respond very easily and you
14 make the therapeutic process almost seem very easy, but on the
15 other hand they can be belligerent, they can be manipulative,
16 they can be sullen, they can say, I don't want to do this.
17 There are a whole range of responses. Just because someone
18 has an I. Q. of such and such number, such and such score, or
19 does not necessarily correspond to how they will react in
20 terms of being persuaded to change a particular behavior that
21 they might be engaged in.

22 Q. In other words the person with a low I. Q. may be just as
23 belligerent and stubborn as the person that's a genius?

24 A. That's true.

25 Q. Now, you heard testimony yesterday about how you

1 determine if someone is being persuaded or is being subjected
2 to suggestibility?

3 A. Yes, I did.

4 Q. Okay. What would you have to have in order to -- what
5 would you want to have in order to determine if a person at a
6 particular period of time was being influenced or manipulated
7 or subjected to suggestibility?

8 A. There would be two things that I think would be important
9 -- actually three -- but two very important. One, I would
10 want to have some evidence that the person's ability to
11 remember, to recall information that he may have or she may
12 have experienced and/or heard was in the normal range of kind
13 of what we would expect for someone of that age.

14 The second thing that I think would be important the
15 latitude suggesting something or influencing something is to
16 have some kind of permanent product or documentation of that
17 interaction. That is a videotape. Certainly at least an
18 audiotape because influencing and persuasion -- much like in
19 therapy -- is not only verbal information that's being given
20 and received, but it's also non-verbal cues as well that need
21 to be examined and the value of it.

22 Q. And so you would need to know not only what was said but
23 how it was said and that sort of thing before you could even
24 begin to speculate as to whether someone was suggested or
25 influenced to act---

1 MR. CROW: Again, your Honor, there's an awful lot
2 of leading going on.

3 THE COURT: Avoid leading.

4 BY THE WITNESS:

5 A. As part of the training to become a clinical psychologist
6 as well as in allied fields such as social work and other
7 mental health fields such as psychiatry. For example, it is
8 customary, for example, for therapy sessions for trainees to
9 be videotaped and for you to be monitored because of that and
10 those influences. That is a typical part of training and so
11 to make judgments about that I would think that that would be
12 equally important.

13 Q. Now, Doctor, there were indications in this test that the
14 defendant -- I believe it was on the Wechsler Memory Scale --
15 showed some marked deficits in visual and verbal recall?

16 A. Yes.

17 Q. Okay. Now, if you are presented with a hypothetical
18 where a person had viewed, participated, witnessed an event
19 that occurred approximately thirty-five days earlier and he
20 had these deficits in memory that are indicated in Doctor
21 Wilkins' report, would it be surprising for that individual to
22 state facts in a less than chronological order?

23 A. It would not be surprising. In fact that's what I would
24 expect.

25 Q. Okay. Would you expect that person to have difficulty in

1 remembering specific details?

2 A. Yes, I would.

3 Q. Would you expect that the most graphic occurrences during
4 that time period would be the things that would be most vivid
5 in the memory?

6 A. That would seem very likely.

7 Q. Now, you indicated that you worked with adolescents that
8 are involved with drug abuse and that sort of thing?

9 A. That's one of my research areas of interest, yes.

10 Q. Okay, and would huffing gasoline -- does that have an
11 effect on the memory?

12 A. Unfortunately there is some evidence that suggests that
13 it certainly has some effect on the brain. Specific
14 impairment we are unclear about, but it is generally
15 recognized that individuals who huff or inhale solvents of one
16 sort or another can do tremendous damage to the brain. Now
17 whether or not these damages are reversible is unclear at this
18 point.

19 Q. And it would cause -- that would cause -- affect memory
20 not only during the time you're under the influence of the
21 gasoline, but also possible down the road?

22 A. Yes, that is certainly a consideration.

23 Q. Okay. And marijuana and alcohol use, do they impair the
24 ability to recall events?

25 A. Yes. Alcohol as many people know is a depressant and

1 when we drink a lot of it we may not remember exactly what we
2 did.

3 Q. Now, if you would in referring to the diagnoses that
4 Doctor Wilkins made, did those diagnoses fit -- or -- or --
5 you -- how significant are those diagnoses? Is this -- does
6 this indicate somebody that is a sick individual?

7 A. If the word sick is referring to someone who is in
8 psychiatric -- significant psychiatric distress, no, they do
9 not. His axis one diagnosis which is typically used to
10 indicate mental health or a mental disorder -- it's adjustment
11 reaction. Many individuals during the course of their
12 lifetime experience what we call an adjustment reaction which
13 is just some impairment in your ability to function day-to-day
14 because of some particular event or some situation.

15 I believe that was his axis one diagnosis and I think
16 that is not a significant psychiatric disorder.

17 Q. Anything in the diagnosis that indicates to you that this
18 defendant had any significant psychiatric difficulty at the
19 time of this examination?

20 A. No, it does not. In fact it stated in the report that --
21 in two or three places that there was no marked
22 psychopathology.

23 Q. Did that necessarily jive with the very detailed
24 description you heard Doctor Wilkins give as to this
25 defendant's emotional insecurity, his lack of -- intense

1 feelings of inferiority, insecurity, lack of self-confidence,
2 self-esteem, did all of that fit with what you see as a pretty
3 insignificant diagnosis?

4 A. No, there was not a great correspondence between some of
5 his descriptions and the diagnoses and also the test results.
6 When I was evaluating or looking at his report, he would
7 report findings and then on some occasions he would make
8 elaborate details of what appeared to be a relatively benign
9 result.

10 MR. DAVIS: One second, your Honor.

11 Pass the witness.

12 CROSS EXAMINATION

13 BY MR. STIDHAM:

14 Q. What are you again?

15 A. I'm a licensed psychologist.

16 Q. You're not a social psychologist, are you?

17 A. No, I am not.

18 Q. Do you know anything about false confessions and police
19 interrogation techniques and influence?

20 A. No, I do not.

21 Q. Do you have any opinion as to whether a police station is
22 a coercive setting or a tranquil setting?

23 A. I don't have any such opinion.

24 Q. Okay. And you mentioned earlier that -- if I heard you
25 correctly and if I didn't, please tell me -- that you thought

1 it was important to videotape.

2 A. Yes, it would seem to me that would be an important---

3 Q. If it's not videotaped, it's sort of kind of hard to
4 figure out what happened, isn't it?

5 A. It would seem to me that would be my opinion, it would be
6 difficult to accurately come to a conclusion.

7 Q. Doctor, is there a difference between not remembering
8 something or just getting it wrong?

9 A. Well, if you get it wrong, you didn't remember it.

10 Q. When did you get retained to -- to work on this case by
11 the State?

12 A. I -- could you define what retained means?

13 Q. When did you know you were going to be working and
14 testifying in this case?

15 A. I knew about the possibility that that might occur a
16 month ago perhaps, maybe, but it -- nothing was definite. I
17 was simply asked to look at the materials.

18 Q. And your name didn't appear on any witness list, did it?

19 MR. DAVIS: Your Honor, I object to that question.

20 It's improper. Mr. Stidham knows---

21 MR. STIDHAM: I'll withdraw it, Judge.

22 THE COURT: Alright.

23 BY MR. STIDHAM:

24 Q. You don't know whether you're going to get paid for this
25 or not?

1 A. No, I do not. I would assume that I'm not because it
2 hasn't been mentioned on the front-end.

3 Q. Okay. How much time has you spent talking and visiting
4 with and evaluating Mr. Misskelley yourself?

5 A. I have not spent any time.

6 MR. STIDHAM: Pass the witness.

7 REDIRECT EXAMINATION

8 BY MR. DAVIS:

9 Q. Just one thing Doctor, you know yesterday Doctor Wilkins
10 was talking about how certain tests showed that this defendant
11 was at the third grade -- performing certain skills at the
12 third grade level or second grade level?

13 A. Yes.

14 Q. Okay. Does that mean from a professional standpoint,
15 does that mean that he is like a third grader?

16 A. No, and that's one of the difficult things at least in my
17 field is that we tend to use results in order to give people
18 frames of reference, and so when we say that a person who is
19 -- in this particular case, he's seventeen or eighteen -- is
20 like a third grader, the reality is they are not like a third
21 grader. Their responses were similar to the way other third
22 grade children responded.

23 Now, particularly what Doctor Wilkins was reporting was
24 how well the defendant could spell words, how well could he
25 calculate math problems on paper and pencil, and how well he

1 could read words that increased in difficulty. Those are
2 academic tests. It's an academic measure and so the responses
3 he gave grossly were very much like a normal or average
4 second, third or fourth grader. Obviously someone who is
5 older than nine, ten, or eleven, obviously has many more
6 experiences and so it would be inappropriate to say they are
7 like a -- someone under their stated age.

8 Q. In other words, that's basically -- they're like a third
9 grader in terms of academic achievements?

10 A. They are responding similar to a child in third grade, an
11 average child, yes.

12 Q. And Mr. Stidham asked you if you were a social
13 psychologist. If you wanted to be licensed -- to be a
14 licensed social psychologist, you couldn't get such a license
15 in the State of Arkansas, could you?

16 A. No, you could not.

17 MR. DAVIS: No further questions.

18 BY MR. DAVIS:

19 Q. Could anybody?

20 A. No, no one. There is no board for that particular
21 discipline.

22 MR. DAVIS: Nothing further, your Honor.

23 (WITNESS EXCUSED.)

24 THE COURT: Alright, ladies and gentlemen, it's
25 about time for a recess. With the usual admonition you

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1 may be in recess for ten minutes.

2 (RECESS.)

3 (THE FOLLOWING DISCUSSION WAS HELD AT THE BENCH OUT
4 OF THE HEARING OF THE JURY.)

5 THE COURT: The jury sent a message to the Court
6 that they wanted to know if telephone records could have
7 been secured. I told her I couldn't answer that question
8 that I'll tell the lawyers. So I've told both of you --
9 all of you. I think what they were talking about was
10 this call from West Memphis to Memphis or West Memphis to
11 Marion and they're not long distance. They're not toll
12 calls so you can't---

13 MR. STIDHAM: Thank you, your Honor.

14 (RETURN TO OPEN COURT.)

15 THE COURT: Alright, Court will be in session.

16 PETE MERCIER

17 having been first duly sworn to speak the truth, the whole
18 truth, and nothing but the truth, then testified as follows:

19 DIRECT EXAMINATION

20 BY MR. FOGLEMAN:

21 Q. State your name and where you live for the jury.

22 A. My name is Pete Douglas Mercier. I live -- used to
23 reside in Highland Trailer Park.

24 Q. And have you ever been to Dyess wrestling?

25 A. I went down one time with some friends not to wrestle.