

1 prosecutor from asking him if he is a member in good
2 standing?

3 THE COURT: Why not? Is he a member of the board
4 or society?

5 MR. STIDHAM: He is, yes.

6 THE COURT: Those questions are asked when you
7 are qualifying a doctor. Are you a member of whatever
8 boards or societies. I think those are proper
9 questions. I don't think you need to go into any
10 inference that he's being investigated or likely to
11 lose his license, particularly if there has been no
12 hearing on it. I'd grant the motion in that regard.

13 MR. STIDHAM: Moving along, on October 19th Mr.
14 Crow and I on behalf of Mr. Misskelley joined in some
15 death penalty motions that were heard in Jonesboro. I
16 neglected to get an order. I just want to make sure I
17 have the record straight. There was a motion to quash
18 the information on the ground that it was
19 unconstitutional due to its overlap.

20 THE COURT: Our Supreme Court has already ruled
21 on those.

22 (RETURN TO OPEN COURT)

23 (VOIR DIRE PROCEEDINGS ARE HELD)

24 CORNING, ARKANSAS, JANUARY 20, 1994, AT 9:30 A.M.

25 (WHEREUPON, A JURY COMPOSED OF TWELVE MEMBERS AND

1 TWO ALTERNATES OF THE REGULAR PANEL OF PETIT JURORS SERVING AT
2 THE PRESENT TERM OF THIS COURT ARE EXAMINED, FOUND QUALIFIED,
3 ACCEPTED AND IMPANELED TO TRY SAID CAUSE.)

4 THE COURT: Ladies and gentlemen, the Court is
5 going to give you an admonition at this time. An
6 admonition is a warning, a caution, that you are not
7 to discuss this case among yourselves or with anyone
8 until the case is finally submitted to you.

9 You must not read about the case in the
10 newspaper, listen to it on the radio, watch any TV
11 account of it or discuss such an account with anyone.
12 It should be obvious to you that there will be
13 extensive media coverage, and you should avoid any
14 such accounts. That doesn't mean you can't read the
15 paper or watch TV. It simply means you must not
16 listen to or watch or read such accounts.

17 It's also very important that you not discuss
18 this case with anyone. Your spouses and families are
19 going to ask you what is happening in the case, but
20 you should tell them that you simply cannot talk about
21 it.

22 You must not discuss anything with the lawyers or
23 the witnesses in the case. You may be talking to them
24 about the weather or something, but someone seeing you
25 across the courtroom won't know what you're talking to

1 that lawyer or witness about, and they're going to
2 assume the worst. That's just human nature.

3 In other words you must be completely impartial
4 in this matter. I say this to you not because I think
5 any of you would go out and try to find out about the
6 facts or that you would deliberately go and discuss
7 the case, but because it's very important that you not
8 only be impartial but that you also give the
9 appearance of impartiality.

10 So with that reminder, you're free to go at this
11 time. In the future I'll simply remind you of the
12 admonition not to discuss the case.

13 (THE FOLLOWING CONFERENCE WAS HELD IN CHAMBERS)

14 MR. FOGLEMAN: Yesterday Mr. Stidham inquired --
15 or asked of Inspector Gitchell that he investigate a
16 particular matter, and part of that would be
17 interviewing a particular person.

18 MR. STIDHAM: Your Honor, before we talk about
19 that on the record, could we talk about it off the
20 record?

21 THE COURT: Is there anything we can do off the
22 record that we can't do on the record?

23 MR. STIDHAM: Before we go on the record and say
24 who that individual is --

25 MR. FOGLEMAN: I wasn't going to --

1 MR. STIDHAM: If you're not going to say the
2 individual's name, I don't have any problems with
3 that.

4 MR. FOGLEMAN: Anyway, this particular person
5 that Inspector Gitchell was requested to explore --
6 we're willing to do that but we don't want it crammed
7 down our throats when Inspector Gitchell or other
8 officers testify saying, "Well, if you're so sure
9 about this case, why are you all still investigating
10 it? Isn't it true that a statement was taken" -- and
11 I understand that Mr. Stidham and Mr. Crow have agreed
12 that that will not be done and the fact that that was
13 looked into will not be inquired of.

14 THE COURT: Are you trying to tell me that Mr.
15 Stidham gave you the name of an individual that might
16 have information about the case and asked that you
17 pursue it? I mean, I'm talking about up to the day
18 the jury goes out and deliberates, I hope the officers
19 are continuing to investigate any lead. I wouldn't
20 expect them to do any less than that.

21 MR. STIDHAM: I think what Mr. Fogleman is trying
22 to say, your Honor, is that he doesn't want us to be
23 able to impeach the officers about, "Isn't it true
24 that you're investigating so-and-so," and make that
25 look like we're --

1 MR. CROW: We're not going to do that --

2 MR. STIDHAM: -- Your Honor, my word as an
3 officer of the court and as a gentleman, I certainly
4 would not do that under any circumstances, and I have
5 every desire in the world for the West Memphis Police
6 Department to investigate this matter fully simply
7 because I believe in the innocence of my client. And
8 anything they can do to investigate that further and
9 fully, I applaud their efforts, and I certainly
10 wouldn't do anything to hamper that at all.

11 THE COURT: You may turn up evidence over the
12 weekend that hasn't been explored. If you do, then
13 that's going to be provided to you and if you have to
14 have a short period of time to review it and interview
15 them, I'm going to permit that.

16 MR. STIDHAM: Likewise, I don't want the West
17 Memphis Police Department to be embarrassed by the
18 fact that they happen to come up on something that may
19 be exculpatory or exonerate him. I don't want them to
20 have any hampers whatsoever with regard to that, and
21 we certainly wouldn't do anything to embarrass them or
22 --

23 MR. FOGLEMAN: The information produced won't
24 bother us at all. We just don't want the fact that
25 they're looking to be used.

1 MR. CROW: That won't happen.

2 MR. FOGLEMAN: If something develops, sure, I
3 expect it to be used in a minute.

4 THE COURT: Well, of course, if you develop
5 evidence that was harmful to them, I'm sure they'll
6 say, "Wait a minute. We haven't heard about it." On
7 the other hand, I expect the officers to investigate
8 right up to the minute they go out and if necessary,
9 afterwards.

10 MR. STIDHAM: We were a little concerned
11 yesterday to find out what we did and to find out that
12 they had known this for a week or ten days and we
13 hadn't heard about it --

14 MR. CROW: That's a different situation.

15 MR. FOGLEMAN: You mean the fact that a knife was
16 seen?

17 MR. STIDHAM: Um-hum.

18 MR. FOGLEMAN: Well, Lord, how many knives have
19 there been in this case?

20 MR. STIDHAM: Fifteen the last time we counted.

21 MR. FOGLEMAN: Okay, fifteen knives --

22 MR. STIDHAM: But there haven't been any
23 anonymous ones with blood on them.

24 MR. FOGLEMAN: And as soon as I got the report,
25 y'all got it.

1 MR. STIDHAM: I just wanted to make that point.

2 (ADJOURNMENT)

3 CORNING, ARKANSAS, JANUARY 26, 1994, AT 9:30 A.M.

4 (THE FOLLOWING CONFERENCE WAS HELD IN CHAMBERS)

5 THE COURT: Let the record reflect this is out of
6 the presence of the jury which hasn't been sworn at
7 this time.

8 Mr. Misskelley, I need to ask you some questions.
9 First of all, today is Wednesday, the 26th, and we are
10 ready to proceed to jury trial and soon as we go out
11 there, the clerk will swear in the jury. Do you
12 understand that?

13 THE DEFENDANT: Um, tell the truth? Is that what
14 you mean?

15 THE COURT: No, I'm asking you do you understand
16 we are about to start your trial?

17 THE DEFENDANT: Oh, yeah, I understand.

18 THE COURT: I need to know if you are satisfied
19 with Mr. Stidham and Mr. Crow's services, to this
20 point.

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Have you discussed with them all of
23 the facts and circumstances of your case so they would
24 be informed to adequately defend you?

25 THE DEFENDANT: Yes, sir.