

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.

1 THE COURT: Have they discussed with you the
2 legal options that you have?

3 THE DEFENDANT: Yes.

4 THE COURT: Have they discussed with you any plea
5 negotiations or offers made by the State?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: You have rejected and turned down any
8 offer to plead guilty in this case?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: You have been advised of the State's
11 offer, whatever it was -- gentlemen, for the record,
12 what was it?

13 MR. CROW: Fifty years.

14 THE COURT: Have you had an opportunity to
15 discuss that with your father, your parents or anyone
16 else that you choose to besides Mr. Crow and Mr.
17 Stidham?

18 THE DEFENDANT: No, sir.

19 THE COURT: Do you want to talk to anyone else
20 about that?

21 THE DEFENDANT: I'd like to talk to my dad about
22 it.

23 THE COURT: I want to give him a few minutes
24 opportunity to --

25 MR. STIDHAM: I have spoken to his father about

1 that, but the four of us have never sat down together.

2 THE COURT: I want you to do that before we get
3 started.

4 Is there anything else you want to say for the
5 record? Are we ready to proceed?

6 MR. STIDHAM: I would like to know -- we had a
7 discussion with the prosecution on Thursday, the last
8 day that we were convened -- and there was some new
9 evidence that I was told about. I was told where the
10 source of the evidence was, but I was not informed as
11 to the connection to the particular person that we are
12 discussing, and I think it is time I be informed of
13 that officially so I can proceed with the defense of
14 my client. I have done a lot of guessing over the
15 weekend. I have stayed out of the way. I have let
16 the police do their investigation and let the
17 prosecution do their investigation. But this is
18 obviously -- could be some sort of exculpatory
19 information and I demand that I be apprised of the
20 entire situation and of the connection and know what's
21 going on.

22 MR. FOGLEMAN: I think Mr. Stidham knows
23 everything. It may be through surmise but from our
24 conversations it is obvious to me that he does know
25 that we have a statement from one of the people that

1 worked or was an independent contractor for Creative
2 Thinking which is making some kind of movie, that he
3 obtained a knife in question that had what appeared to
4 be blood on it and did turn out to be blood from Mark
5 Byers, who is the father of one of the victims -- or
6 stepfather --

7 MR. CROW: Adoptive father.

8 MR. FOGLEMAN: Adoptive father of one of the
9 victims. And at this point we talked to Genetic
10 Design this morning, and they have indicated, number
11 one, they cannot tell us all of the individual
12 results; for instance, which DQ Alpha type is Mark
13 Byers and Melissa Byers and the son until it actually
14 comes from the director of the corporation. But he
15 did say they could not carry it any further -- their
16 analysis -- than they already had, which showed that
17 the DQ Alpha type of the blood that was found on the
18 knife is what -- can't think of the number -- but
19 anyway it is the same DQ Alpha type as that of Chris
20 Byers.

21 MR. CROW: The victim.

22 MR. FOGLEMAN: The victim, Chris Byers. And that
23 means that according to the expert there are eight
24 percent of the population -- the white or Caucasian
25 population -- that has that particular DQ Alpha type.

1 We also, Mr. Davis and I, have talked to the
2 Medical Examiner in this case and he has indicated
3 that the serrations on this particular knife are not
4 consistent with the serration marks on any of the
5 bodies like this knife that was found in the lake is.

6 MR. STIDHAM: Your Honor, my concern is I know
7 where the police got the knife but I don't know how
8 the Creative Thinking people got the knife.

9 MR. FOGLEMAN: I just said that he gave a
10 statement to the police that Mark Byers gave him the
11 knife.

12 MR. STIDHAM: That's all there is to it?

13 MR. FOGLEMAN: I don't have his statement.
14 Inspector Gitchell has talked to him, and I have not
15 talked to him about the specifics of the statement. I
16 can get him in here, see what he says.

17 MR. STIDHAM: I would like that information.

18 MR. FOGLEMAN: If Mr. Byers has just gotten here,
19 Gary is going to try to interview him.

20 MR. STIDHAM: I certainly don't want to do
21 anything to interfere with that.

22 MR. DAVIS: Judge, one thing. I certainly have
23 nothing against Val or Scott personally and enjoy
24 their company, but since this trial has been severed
25 and they are no longer a party to this trial and I

1 realize that 98 percent of what happens back here may
2 not matter to them one way or another, but I don't
3 think they have any more right to be back here than
4 any attorney anywhere else that isn't involved in this
5 case, and we would object to them being privy and back
6 here during conferences that are out of the hearing of
7 the jury and that during the course of the trial that
8 they be seated -- if they want to observe it, they can
9 observe it where other nonparticipants observe it but
10 not be huddled up there where they can easily confer
11 with defense counsel.

12 If they insist and if they want to do that, then
13 we certainly feel it is our option to inform the jury
14 that Damien's attorneys are up here consorting -- and
15 point out during closing argument and things of that
16 nature that Damien's attorneys are consorting with the
17 defendant, Jessie Misskelley, and his defense team.

18 MR. STIDHAM: Judge, that is the most ridiculous
19 thing I have ever heard in my long distinguished
20 career as an attorney. And I would object -- does
21 that mean Mr. Calvin can't come back here, too?
22 That's ridiculous. They are officers of the Court and
23 they have a stake in the outcome of this. Even though
24 the trials have been severed, they have --

25 THE COURT: I'm going to let them come back.

1 Although we don't have much room, it has kind of been
2 traditional for lawyers who are curious and gawkers
3 even to drift back in the back where conferences were
4 held and to sit off to the side in front of the rail.
5 That happens in every courthouse, although our
6 circumstances are a little bit cramped right now. I
7 don't have any particular problem with them back here.

8 Gentlemen, if you do sit behind the defense and
9 the prosecution wants to point that out, I'm going to
10 allow it. Particularly if you're making whispered
11 conversations or carrying on, they'll certainly be
12 permitted to indicate who you are and you are carrying
13 on conversations and consulting so you might out of
14 better interest for your own clients be removed during
15 the trial from the defense team.

16 If they invite you to sit down, fine. But then
17 surely they are going to be able to comment about it.

18 MR. STIDHAM: Your Honor, would you note our
19 objections to that -- the prosecutor making any
20 mention of that whatsoever.

21 THE COURT: I just said I'm only going to allow
22 that if they are up there conferring with you or
23 sitting at counsel table or at close proximity to it
24 conferring with you. If they are not, it is not a
25 matter to be even mentioned.

1 MR. STIDHAM: If I get up during Mr. Davis' or
2 Mr. Fogleman's direct examination of a witness and
3 walk over to Mr. Price and ask him something or if he
4 walks over and says something to me, they are going to
5 be allowed in closing to say that Damien Echols'
6 lawyers assisted in Mr. Misskelley's defense?

7 THE COURT: That's not what I'm saying.

8 MR. FOGLEMAN: I don't know why they need to be
9 sitting inside the rail.

10 MR. STIDHAM: Judge, they are co-defendants'
11 attorneys. They've got just as much right to --

12 MR. FOGLEMAN: Then they ought to be introduced
13 as such.

14 THE COURT: If they are going to be sitting where
15 it's obvious to everyone in the courtroom that you are
16 conferring and acting in concert, then I'm going to
17 let them comment on it if they want to. I just said
18 they are welcome in the courtroom. They are welcome
19 in the chambers. They're here. I'm not going to
20 exclude them. But out in the courtroom -- if you want
21 to consult with anybody, that's fair. If they are
22 going to be sitting in close proximity to you where it
23 is apparent that they're aiding and assisting, then
24 the State is going to be permitted to point that out.

25 And I just suggested that they are welcome here,

1 but they probably ought to move on down the bench a
2 little bit. I don't care if you talk to them. That's
3 up to you. I don't care if they talk to you. I'm
4 surely not preventing that. I want that very clear.
5 But if they sit at counsel table and confer with you,
6 they are going to be able to point that out.

7 MR. STIDHAM: I don't anticipate that happening.

8 THE COURT: The jury would be entitled to know
9 who those two distinguished looking young attorneys
10 are that are up there. They may confuse them with an
11 expert or something.

12 MR. DAVIS: We would also like to identify Mr.
13 Price and Mr. Davidson along with whoever those two
14 distinguished looking attorneys are.

15 MR. FOGLEMAN: Your Honor, this is the statement
16 of Doug Cooper who says that, "On December the 19th
17 Doug Cooper received a hunting knife from Mark Byers
18 at Mr. Byers' home during the late afternoon or early
19 evening. Knife had a dark synthetic handle which the
20 blade folded into. The total length of the knife was
21 about nine inches. Mr. Cooper presented the knife to
22 Joseph Burlinger and Bruce Sinofsky who in turn
23 reported it to HBO. Upon being informed HBO demanded
24 that the knife be returned to the West Memphis police.
25 Mr. Cooper transferred the knife to Burlinger and

1 Sinofsky who then sent the knife via Federal Express
2 to Detective Gitchell of West Memphis."

3 Gary's notes say that, "Cooper said that he
4 received the knife on December 19th, late afternoon
5 from Mark Byers while at his residence. It was a
6 folding type hunting knife, serrated edge blade, blade
7 about three and a half to four and a half inches
8 folding into handle. Handle was a composite type,
9 black in color. Said by Byers, 'If I liked or
10 appreciated knives.' Was fishing all day, had been
11 asleep on the couch. He left. Came back with the
12 knife. Took the knife out. 'I want to give you
13 something. I want to keep it in your car.'"

14 "Told him I didn't want the gift. Couldn't
15 understand why he gave it to him. Said it was sharp.
16 Said, 'It is between us. We have something between
17 us. I want you to think of me if you should ever use
18 it.' Safety, protection. Stayed maybe a half hour,
19 forty-five minutes, then left. Took knife back to New
20 York with me. Could tell the knife had been" -- looks
21 like "used for a while." Maybe he meant could not --
22 or "could tell the knife had not," but there's not any
23 "not" there.

24 "Looked like a serrated blade, cut leg off a deer
25 in November. I have suspicions and my colleagues

1 brought it to the attention of HBO. My possession was
2 made known to them. They advised the knife to be
3 turned over to the police. I gave verbal permission
4 for the person -- Bruce and Joe together mailed the
5 knife by Federal Express, shown as Gitchell sending
6 and Gitchell receiving in order to protect identity.
7 They videotaped possession of the knife and possession
8 of the Fed Ex slip."

9 MR. STIDHAM: When do we expect a lab report from
10 North Carolina?

11 MR. FOGLEMAN: Well, we talked to them this
12 morning. Gary said that within 30 or 40 minutes of
13 about ten minutes ago that we ought to be getting
14 something from them faxed here and it is going to be
15 handwritten. It's not going to be a formal official
16 report, but that's what they said. And last check Mr.
17 Byers had not arrived yet.

18 MR. STIDHAM: Your Honor, I have made a formal
19 request that the interrogation or questioning of Mr.
20 Byers be recorded from the beginning until the end.

21 THE COURT: I instructed Gitchell to record it as
22 well. He plans to record his entire conversation and
23 plans to advise him of his rights.

24 MR. STIDHAM: Thank you, your Honor.

25 THE COURT: And you will be given a copy of the

1 interview.

2 MR. STIDHAM: Your Honor, I have a couple of
3 motions in limine that I would like to present.

4 (BRIEF RECESS)

5 THE COURT: Let's go back on the record.

6 MR. STIDHAM: Back on July 26th, 1993, we filed a
7 motion in limine for disclosure, and that was a very
8 broad motion, and we have filed subsequent motions
9 asking to exclude any reference to prior bad acts or
10 juvenile offenses of the defendant. Obviously there
11 may be some relevancy and the issue may be discussed
12 at mitigation if that becomes necessary.

13 THE COURT: I thought I had already ruled on
14 that.

15 MR. FOGLEMAN: You said that we -- when we were
16 introducing them at the hearing, you said that you
17 would take that up at the appropriate time as to
18 whether they would be admissible.

19 It's our position as far as the advice of rights
20 that the fact that he had been advised of his rights
21 four or five times would be relevant if they put on
22 the defense that they've indicated they would -- a
23 false confession and he really didn't know what he was
24 doing and that kind of thing.

25 THE COURT: I'd probably allow the advice of

1 rights going to the issue of whether or not he knew
2 and understood those rights and them having been given
3 to him on three or four different occasions. However,
4 any substantive juvenile offense that he was charged
5 with -- I'm going to suppress that. That is not to be
6 mentioned.

7 However, it might be relevant and admissible
8 provided we got to the punishment phase of the trial.
9 I'm not ruling on that at this point. I can see where
10 that's possibly admissible during the punishment phase
11 but during the guilt/innocence phase of the trial, no
12 reference to any juvenile crime will be allowed.

13 MR. STIDHAM: Your Honor, we have also filed a
14 motion in limine asking to exclude photographs of the
15 victims and autopsy photographs.

16 I know that the Supreme Court has determined that
17 those are relevant in showing wounds and things of
18 that nature, but I would like to point out one thing
19 that makes this case a little bit different from all
20 the others that I've researched. That is, our defense
21 is, your Honor, that we were not there and even if you
22 look at Mr. Misskelley's statement nowhere in the
23 statement does he indicate that he did anything to the
24 victims or hurt them or cut them or anything of that
25 nature and, therefore, we would submit that the

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1 prejudice of showing these very horrific pictures is
2 going to be very great and their probative value
3 actually as to what was Mr. Misskelley's participation
4 in this, if you choose to believe his statement,
5 certainly the prejudice outweighs the probative value,
6 and we would ask that no photographs of the bodies be
7 admitted into evidence in that the Medical Examiner
8 can describe those wounds to the jury and that would
9 be sufficient.

10 THE COURT: I'm going to deny that motion. The
11 Medical Examiner can use his photographs, use
12 photographs taken at the scene, so long as those
13 photographs are used to depict the type of injuries
14 sustained, the location of the wounds, the possible
15 weapon used. There are a multitude of reasons why
16 those photographs may be admissible. I will, however,
17 consider the introduction of the photographs on an
18 individual basis as tendered, and you can proffer your
19 objection at that time.

20 Basically, I'm going to allow the photographs.
21 I'm not going to allow repetitious and cumulative gory
22 or gruesome photographs. I will allow a sufficient
23 number for the State to prove cause of death, method
24 and motive and manner of death if necessary.

25 And I'm not going to rule on the pictures until I

1 see them and they're submitted to me. So what you
2 will do is tender it to the defense and then to the
3 Court, and then I'll rule it is either admissible or
4 not admissible.

5 And my initial ruling is whatever is necessary
6 for them to show the extent of the injuries I'm going
7 to allow but not cumulative and duplicative type
8 photographs.

9 MR. STIDHAM: If the State has no objection,
10 could we have a few minutes to look at those and get
11 those ruled on before we get in there?

12 THE COURT: I think y'all need to look at them
13 and see what you can agree on and the ones you can't,
14 set aside, and then I will rule on them.

15 MR. STIDHAM: The Court won't permit repetition.

16 THE COURT: No.

17 MR. DAVIS: We don't anticipate those coming in
18 until at least sometime tomorrow.

19 MR. FOGLEMAN: There are some crime scene
20 photographs.

21 MR. STIDHAM: Depicting the bodies?

22 MR. FOGLEMAN: Sure. It is part of the crime
23 scene. You have seen them all.

24 THE COURT: Give them an opportunity to see them
25 when you tender them, and I'll rule on them. I'm not

1 going to rule in limine on photographs. I will, if
2 they become repetitious or overly -- repetitious
3 photographs are not going to be allowed.

4 MR. STIDHAM: Your Honor, two other motions, one
5 of which is a motion challenging the constitutionality
6 of Arkansas Code Annotated 16-8911 (d). That deals
7 with the corroboration necessary to convict someone
8 based on a confession.

9 And our challenge to that statute is based on the
10 fact that the defendant is entitled to a fair and
11 impartial trial under the terms of both the Arkansas
12 and United States Constitutions and the provisions of
13 Arkansas law requiring corroboration of a confession
14 in a criminal case are unconstitutional in that they
15 are violative of the fair trial and due process
16 clauses of the United States Constitution in that they
17 only require proof that the offense charged was
18 actually committed by someone in order to corroborate
19 a confession.

20 Further, the current law does not account for the
21 possibility of a false confession by a criminal
22 defendant. And we would further submit that not
23 requiring the State to corroborate a confession by
24 producing some evidence independent of the confession
25 that the defendant himself actually committed the

1 crime, violates the due process rights of the
2 defendant.

3 We would also submit, your Honor, that the
4 current provisions of Arkansas law regarding
5 corroboration of a confession is violative of Arkansas
6 Code Annotated five dash one dash one eleven A one
7 which provides that the State is required to prove
8 each element of the charges against the defendant
9 beyond a reasonable doubt.

10 And that not requiring the State to corroborate a
11 confession by producing evidence independent of a
12 confession that the defendant himself actually
13 committed the crime, unfairly shifts the burden of
14 proof to the defendant who is not legally required to
15 prove his innocence.

16 Also, we would submit that the legislature in
17 promulgating sixteen dash eighty-nine dash one eleven
18 D they promulgated and pronounced an arbitrary and
19 unreasonable classification of the defendants, and
20 that is a denial of the equal protection rights of the
21 defendant which are guaranteed him under the
22 Fourteenth Amendment of the United States
23 Constitution.

24 Basically, our argument there is, your Honor,
25 that a co-defendant can't be convicted solely upon the

1 statement of another co-defendant. For example, if
2 Mr. Misskelley was to testify against one of the other
3 two co-defendants, the State would be required to
4 prove -- provide some evidence corroborating that and
5 linking that particular co-defendant to the crime, and
6 that is not required to corroborate a confession of
7 the defendant himself and, therefore, the State is
8 treating these two co-defendants differently, and we
9 submit that that is a violation of equal protection.

10 THE COURT: Denied. You might raise those on a
11 motion for directed verdict. I might consider them at
12 that time. I'm going to deny your constitutional
13 challenge of the statute. There are a multitude of
14 cases following that annotation. In fact there are
15 several pages of cases that our Court has ruled on
16 those issues, and it is extremely well-established law
17 and, therefore, it is denied.

18 MR. STIDHAM: Your Honor, thank you for your
19 consideration. That leaves us with one motion that
20 hasn't been ruled upon yet and that is a motion
21 regarding comment on the evidence and while I feel a
22 little bit reluctant to raise this motion, I felt that
23 it was important.

24 MR. DAVIS: Is this the "Lohnes Tiner motion?"

25 MR. STIDHAM: I've heard it referred to as that.

1 Basically, I don't know if you've had an opportunity
2 to review that or not, but your Honor has a long
3 distinguished career as prosecuting attorney and judge
4 and in previous trials and also in this trial I notice
5 that your Honor likes to participate in the
6 interrogation of witnesses, and there was at one point
7 when I had an expert on the stand at a previous
8 hearing that your Honor made a comment about "street
9 smarts" and "street wise" and there wasn't a jury in
10 the box and I didn't make an objection at that point
11 --

12 THE COURT: I think my comment to the
13 psychologist was, "Did he have street smarts? Was he
14 able to --" or something to that effect. But that
15 certainly wasn't a comment on the evidence and Lohnes
16 Tiner notwithstanding, if the Court feels the need to
17 ask a question for clarity purposes and to inform the
18 jury, that is my duty and responsibility, and I am
19 going to ask any question that I think is pertinent.
20 Whether it's the State's witness or defense witness.
21 If it is necessary to clarify an issue for the jury or
22 the Court, then I'm going to ask what I feel is
23 appropriate.

24 MR. STIDHAM: Your Honor, I'm not suggesting that
25 you don't have the right to do that under Arkansas law

1 but the point I want to make is --

2 THE COURT: I'm not going to try the case for
3 anyone if that is the point you're trying to make.

4 MR. STIDHAM: The point that I'm trying to make
5 and doing so without angering the Court --

6 THE COURT: I'm not getting angry at anyone.

7 MR. STIDHAM: Your Honor, the point that we are
8 trying to make in our motion is not that the Court
9 doesn't have the power to ask questions. The point we
10 are trying to establish is that the jury is going to
11 look to your Honor as a leader and if you ask a
12 particular question that perhaps the prosecutor may
13 have forgot to ask and any response or comment that
14 you might make could have an effect upon the jury, and
15 we ask that your Honor be careful in choosing comments
16 and questions.

17 THE COURT: I'm not going to comment on the
18 evidence. I might ask a question that you forgot to
19 ask as well or should have asked.

20 MR. STIDHAM: I also have an order ruling on our
21 motion in limine to exclude the prosecutor from
22 mentioning the finding of voluntariness of the
23 confession --

24 THE COURT: No, you're not going to do that. I'm
25 not going to allow them to do that in opening

1 statement that the judge has found his statement was
2 voluntary. I'll grant a motion in limine to that
3 effect. I'm not going to allow you to say it either
4 or comment on it.

5 MR. STIDHAM: I have no desire to do that.

6 THE COURT: In fact I don't want either one of
7 you commenting on any order that the Court enters. I
8 don't think that's appropriate. If I entered an
9 order, it's the law of the case.

10 (RETURN TO OPEN COURT)

11 MR. STIDHAM: We are going to be asking that
12 there be an exception made for the rule.

13 THE COURT: You mean as to expert witnesses?

14 MR. STIDHAM: That's correct.

15 MR. DAVIS: As to the particular expert they're
16 talking about, it is our opinion that he could be
17 excluded from the rule for any expert we might offer
18 to testify but as far as anything to be gained from
19 hearing the other testimony or anything that would
20 bear on his opinion, it would be inappropriate for him
21 to hear other testimony just as it would other
22 witnesses.

23 MR. STIDHAM: Your Honor, that's not the law.
24 It is clear that experts are allowed to remain in the
25 courtroom and hear the testimony. They can base their

1 testimony on what they hear in the courtroom, and we
2 would ask that the exception be made for our expert.

3 THE COURT: There are witnesses that can
4 assimilate what they hear by way of testimony and use
5 that information to form an opinion, that is true.
6 But what witnesses are you talking about that need to
7 do that?

8 MR. STIDHAM: Our psychologist, your Honor.

9 THE COURT: Approach the bench.

10 (THE FOLLOWING CONFERENCE WAS HELD AT THE BENCH
11 OUT OF THE HEARING OF THE JURY)

12 MR. STIDHAM: Your Honor, it's clear that the
13 rules allow for this exception.

14 THE COURT: That is not the problem. What is
15 it he needs to specifically hear in the courtroom?

16 MR. STIDHAM: Everything.

17 THE COURT: To form an opinion as to what?

18 MR. STIDHAM: He's going to testify as to Mr.
19 Misskelley's mental capability, and he is going to
20 testify as to what his mental capability was during
21 the interrogation, and we feel that's very important
22 that he hear the testimony. I don't know when this is
23 going to come in.

24 MR. FOGLEMAN: What has that got to do with
25 mental capability?

1 MR. STIDHAM: What prejudice will the State have
2 by allowing him to listen to the testimony?

3 MR. DAVIS: Judge, it is very important that
4 Doctor Wilkins be confined to areas that his expertise
5 actually applies to. They are attempting to range far
6 beyond his area of his expertise --

7 MR. STIDHAM: -- Judge, they can bring that up at
8 the proper time.

9 MR. DAVIS: Are you going to let me finish?

10 MR. STIDHAM: Sure.

11 MR. DAVIS: If they are allowed to have him
12 listen to all the testimony, then he is going to get
13 into areas that we feel like clearly go beyond his
14 expertise and what we anticipate they're going to do
15 is talk about based on what he's seen or observed how
16 the officers influenced him and that is clearly not
17 something he can give an opinion on.

18 MR. STIDHAM: Judge, he can give his opinion on
19 that. They can challenge that at the appropriate time
20 when he testifies but now is not the appropriate time
21 to do that.

22 MR. FOGLEMAN: Mr. Stidham has indicated to the
23 Court that the only thing he will be giving opinions
24 on is the defendant's mental capacity, either now or
25 at the time the questioning occurred, and I don't see

1 how anything that occurs in the courtroom could affect
2 his opinion on the defendant's mental capacity.

3 MR. STIDHAM: Judge, what are they afraid of?
4 Are they afraid he's going to hear something that -- I
5 just want to make it clear that he should be able to
6 hear all the testimony and if there's anything that he
7 hears --

8 THE COURT: I'm going to let him stay in. Is
9 that the only one?

10 MR. STIDHAM: Yes, your Honor.

11 THE COURT: Do you have any you want to stay in?

12 MR. FOGLEMAN: The victims' families, your Honor.

13 THE COURT: They'll be excused from the rule as
14 soon as they testify.

15 (RETURN TO OPEN COURT)

16 (OPENING STATEMENTS BEING MADE BY COUNSEL FOR THE
17 PARTIES)

18 (WITNESSES BEING SWORN BY THE CLERK; THE RULE IS
19 INVOKED)

20 DANA MOORE
21 having been first duly sworn to speak the truth, the whole truth
22 and nothing but the truth, then testified as follows:

23 DIRECT EXAMINATION

24 BY MR. FOGLEMAN:

25 Q Will you please state your name and where you live?