

1 and I find that it was certainly reasonable to  
2 authorize a nighttime search, probably would have done  
3 so myself. So the motion will be denied.

4 (PROCEEDINGS CONCLUDED)

5 JONESBORO, ARKANSAS, OCTOBER 19, 1993, AT 1:30 P.M.

6 THE COURT: This is the State of Arkansas versus  
7 Jessie Misskelley, Jason Baldwin and Michael Damien  
8 Echols.

9 The first motion to take up and consider is the  
10 motion to transfer to juvenile. Mr. Wadley and Mr.  
11 Ford, that's your motion.

12 MR. FORD: Your Honor, as the Court is well  
13 aware, Jason Baldwin is 16 years of age. He's clearly  
14 under the age of 18. The Juvenile Code is applicable  
15 to individuals charged with criminal offenses being  
16 below the age of 18 years of age. We feel that that  
17 in and of itself raises the issue regarding whether or  
18 not this matter is properly in a Circuit Court forum  
19 as opposed to being transferred to Juvenile Court.

20 Your Honor, defense counsel is aware that there  
21 are certain enumerated crimes that do provide the  
22 prosecuting attorney discretion with respect to filing  
23 against a juvenile in Circuit Court due to both the  
24 age of Mr. Baldwin and the offense charged -- capital  
25 murder -- provide that discretion to the prosecuting

1 attorney.

2 However, your Honor, we would submit on the basis  
3 of our motion and the statute that is cited that this  
4 is a case that should be transferred to Juvenile  
5 Court. The considerations that are of particular  
6 importance to the defense in this matter are that the  
7 Court is to take into consideration the ability for  
8 rehabilitation that could exist for a minor and the  
9 absence or extent of criminal -- past criminal  
10 involvement of the juvenile.

11 In this case there is a bare minimum if not an  
12 absence of criminal activity on behalf of Jason  
13 Baldwin which would place him clearly in that category  
14 and also, your Honor, Mr. Baldwin is a good student.  
15 He has not been a discipline problem at home. He has  
16 not been a discipline problem in the school system.  
17 He has made good grades within the school system, all  
18 of which would indicate an ability to live within a  
19 system of confines that require him to live up to  
20 certain codes of conduct. We feel those matters  
21 should be taken into consideration in that Mr. Baldwin  
22 -- if in fact he is guilty of any crime -- which we  
23 vehemently deny -- he would be a candidate for  
24 rehabilitation.

25 And so, your Honor, based on the statute and the

1 motion on its face, we would ask that this matter as  
2 to the defendant Jason Baldwin be transferred to  
3 Juvenile Court.

4 THE COURT: I have read your motion and your  
5 brief and I want to hear from the State now.

6 MR. FOGLEMAN: Your Honor, the State is prepared  
7 today to put on evidence in regard to this motion to  
8 transfer to Juvenile Court. We submit that based on  
9 the standards that the Court is to follow pursuant to  
10 Arkansas Code Annotated Section nine twenty-seven  
11 three eighteen that evidence is necessary and you  
12 cannot simply take Mr. Ford's statements on their  
13 face, but evidence is required as to things and we are  
14 prepared today to go forward with evidence in this  
15 matter.

16 THE COURT: All right. Are you ready to proceed  
17 at this time?

18 MR. FOGLEMAN: Yes, sir.

19 (WITNESSES BEING SWORN AT THIS TIME)

20 MR. FORD: Your Honor, we would request that this  
21 hearing be conducted in-camera by virtue of the fact  
22 that this is a consideration of a juvenile offense.  
23 He is a juvenile, and the Juvenile Code provides him  
24 with certain protections regarding the openness of the  
25 courtroom and openness of the record that are not

1           afforded to adult defendants and in light of the fact  
2           that we are making a consideration of evidence under  
3           the Juvenile Code, we would ask that it be heard  
4           in-camera.

5           THE COURT: I'm going to grant that motion.  
6           You're going to have to clear the courtroom  
7           temporarily.

8           (WHEREUPON, THE FOLLOWING MATTERS WERE HELD  
9           IN-CAMERA)

10           THE COURT: The reason I closed this hearing is  
11           that if I elected after hearing your proof to remove  
12           the case to Juvenile Court, even though this is a  
13           hearing in Circuit Court, that that evidence that  
14           would have been adduced would be made a public record  
15           more or less and their rights under any hearing by the  
16           Juvenile Court would therefore be abridged so I'm  
17           going to conduct the evidentiary portion of the  
18           hearing in-camera.

19           MR. FOGLEMAN: Your Honor, is this just as to  
20           Jason Baldwin, or are we doing Jessie Misskelley, too?

21           THE COURT: Right now I'm considering it just to  
22           Mr. Baldwin.

23           MR. FOGLEMAN: Okay.

24           JERRY DRIVER

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

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

2 DIRECT EXAMINATION

3 BY MR. FOGLEMAN:

4 Q Will you please state your name and occupation?

5 A Jerry Driver. I'm the juvenile officer for Crittenden  
6 County.

7 Q How long have you held that position?

8 A Ah, little over a year and a half.

9 Q At my request did you bring with you the entire file  
10 related to Charles Jason Baldwin?

11 A Yes, I did.

12 Q Is that file kept in your office and under your supervision  
13 and control?

14 A Yes, it is.

15 Q Would you look at that file and tell me the first offense  
16 that Mr. Baldwin had in Juvenile Court?

17 A (EXAMINING) First offense that he had in Juvenile Court was  
18 a breaking and entering and criminal mischief and that was on --  
19 let's see -- one thirteen of ninety.

20 Q January 13, 1990?

21 A Yes, sir.

22 Q And do you know about -- was it a felony criminal mischief  
23 or misdemeanor?

24 A It was Class C felony.

25 Q And what was the result of that?

1 A He was placed on probation and ordered to pay restitution.  
2 There's also a note in this that he was ordered to the Arkansas  
3 Boys Training School pending payment of restitution.

4 Further along, there is a motion to rescind his probation  
5 because he had not paid his restitution.

6 Q Were there any subsequent offenses to that?

7 A The next offense that we have on Mr. Baldwin is a  
8 shoplifting offense which occurred fifteen November of '92.

9 Q And how was that offense handled?

10 A That was handled through a diversion agreement.

11 Q And in the diversion agreement does the defendant sign --  
12 or the juvenile sign a statement acknowledging their commission  
13 of the offense?

14 A Yes, sir, they do.

15 Q Did he do that in this case?

16 A He did so.

17 CROSS EXAMINATION

18 BY MR. FORD:

19 Q Mr. Driver, may I look at that file?

20 A Yes, sir. (HANDING)

21 THE COURT: Just for my notes, was Mr. Baldwin  
22 sixteen at the time of the alleged offense?

23 MR. FORD: Yes, sir. He's sixteen now.

24 THE COURT: What was his age at the time of the  
25 offense? What is his date of birth?

1 MR. FORD: Four eleven seventy-seven, your Honor.  
2 He was sixteen at the time of the commission of the  
3 alleged offense.

4 MR. FOGLEMAN: Sixteen at the time of the alleged  
5 offense.

6 BY MR. FORD:

7 Q At the time Mr. Baldwin executed the diversion agreement  
8 which you made reference to, which copy was in the file --  
9 actually he entered that diversion program or signed these forms  
10 January 22, 1993. Is that correct?

11 A Yes, sir.

12 Q On that last page, there are signatures there which purport  
13 to be Jason and how is that signed -- his signature?

14 A Jason Baldwin.

15 Q Is there a parent's signature?

16 A (EXAMINING) Yes. Gayle Grinnell.

17 Q Is there an attorney for Mr. Baldwin at that proceeding?

18 A No, sir.

19 Q Did an attorney sign that agreement for diversion along  
20 with Mr. Baldwin?

21 A No, sir.

22 Q Was he represented by counsel at any time prior to the  
23 entry of that diversionary agreement?

24 A No, sir, he waived his right.

25 Q Is that -- is that document a waiver of rights represented

1 by that same form?

2 A No, sir.

3 Q Do you have that? Can you show me where he waived his  
4 right to counsel prior to the entry of the diversionary  
5 agreement?

6 MR. FOGLEMAN: Judge, the commotion back a minute  
7 ago -- the reporter with the Commercial Appeal was  
8 telling the officer that their attorneys had filed a  
9 motion to prohibit this kind of hearing, and I just  
10 wanted to bring that to the Court's attention.

11 THE COURT: Okay. Well, that will be taken up  
12 after we hear this.

13 BY MR. FORD:

14 Q When a juvenile is subjected or made available for the  
15 diversionary program -- once he enters that diversionary program  
16 -- he is not adjudicated --

17 THE COURT: It is not an adjudication but it is a  
18 juvenile record and for the purposes of this hearing  
19 the Court is going to consider it.

20 MR. FORD: I understand that. I just want to  
21 make it clear that it is not an adjudication.

22 THE COURT: All right.

23 BY MR. FORD:

24 Q The breaking and entering and criminal mischief. You  
25 indicated that he was sentenced to the training school but that

1 sentence was suspended or placed on probation provided he pay  
2 restitution and that in the event he failed to pay restitution  
3 he would be sent to the training school, and subsequent thereto  
4 there was a petition filed to revoke that probationary sentence  
5 by virtue of his failure to pay the restitution. Is that  
6 correct?

7 A I cannot testify to that directly because I wasn't there at  
8 the time. That is what the record indicates.

9 Q Was he represented by counsel at that time -- at that first  
10 proceeding?

11 A He would have been in court.

12 THE COURT: Are you raising that as an issue like  
13 the DWI convictions that they can't be considered  
14 unless there was counsel present? Is that what you  
15 are --

16 MR. FORD: Your Honor, I have not seen this file  
17 so I'm --

18 THE COURT: I just asked if that is why you are  
19 raising that question.

20 MR. FORD: Your Honor, if he -- I feel like if he  
21 is or is not represented by counsel, as a juvenile  
22 could have an impact on the Court's consideration as  
23 to whether or not he has a sufficient criminal record.  
24 He may not have been guilty of these things at all but  
25 felt like in all things considered --

1 THE COURT: That might be a good point to raise  
2 if and when it got to a jury question as to whether or  
3 not it was admissible as to lack of counsel, but I'm  
4 not sure at this particular aspect of the hearing  
5 whether or not it is really important.

6 MR. FORD: Your Honor, I think it could go to --

7 THE COURT: All right. Go ahead.

8 MR. FORD: -- Whether or not he had a substantial  
9 criminal history, your Honor.

10 BY MR. FORD:

11 Q Did he have an attorney at that time?

12 A He would have had one in court.

13 Q Does the record reflect who that attorney was?

14 A My record will not but the court record will.

15 Q So you do not have records there --

16 A No.

17 THE COURT: Let me ask -- in Crittenden County  
18 does the public defender not appear routinely at all  
19 juvenile hearings to represent a juvenile charged with  
20 a juvenile felony offense?

21 THE WITNESS: Yes, sir, he does.

22 THE COURT: And that is Mr. Montgomery or someone  
23 from his staff?

24 THE WITNESS: Yes, sir.

25 THE COURT: All right.

1 BY MR. FORD:

2 Q Did he have a trial or did he enter a plea to the petition?

3 A Again, that would probably not be indicated in these  
4 records. It would probably be in the court records.

5 Q So you're not able to tell us whether he admitted his  
6 delinquency or whether he contested his delinquency?

7 A No, sir, I could not.

8 Q Nor are you able to determine whether or not he -- you  
9 don't have any information other than what you have told me --

10 A I have my court records.

11 Q Is there any other information that you have with respect  
12 to his juvenile involvement other than these two you have just  
13 told us about?

14 A Other than the statements that were given at the time this  
15 happened. We do have those.

16 Q Was he adjudicated a juvenile delinquent at that hearing in  
17 1990?

18 A Yes, sir.

19 Q Was his probationary status ever revoked?

20 A I believe the record in here shows it was. (EXAMINING) It  
21 says he did violate the rules of his probation by failing to pay  
22 restitution by this Court on February 26, 1990. That was filed  
23 on February 21st, 1991.

24 Q Was there --

25 A I don't see a further probation order in here.

1 Q -- anything to indicate that he was ever given additional  
2 punishment available under the Juvenile Code?

3 A Not to my knowledge.

4 Q Never sent to the training school?

5 A I take that back. In the same paperwork it says on his --  
6 yes, he was adjudicated in that case. He was adjudicated and  
7 placed on further probation and in that probation order it said,  
8 "Ordered sent to the Boys Training School pending payment of  
9 restitution."

10 That is on the violation of probation. The original one  
11 did not send him to the training school.

12 Q The original one was purely probation?

13 A Right.

14 Q The second one was probation but if you violate it, you go  
15 to the training school?

16 A Well, it doesn't say that. It says that he was ordered to  
17 the training school pending payment of restitution.

18 Q Does the record ever indicate that he was sent to the  
19 training school?

20 A No, sir. And I wouldn't have that record.

21 (WITNESS EXCUSED)

22 MR. FOGLEMAN: We would need him on Mr.  
23 Misskelley's motion.

24 MR. STIDHAM: Your Honor, for the record we  
25 object to us having to proceed with this motion today.

1 We are simply not ready. I would submit to the Court  
2 again the discovery process is still ongoing. We are  
3 receiving information from the prosecutor -- still  
4 investigating -- our investigation is not completed.  
5 Our research is not --

6 THE COURT: You're not even going to have to do  
7 discovery in essence if this case is transferred to  
8 juvenile. I cannot see -- what is the specific reason  
9 why you cannot hear the motion to transfer right now?

10 MR. STIDHAM: Your Honor, we are not prepared to  
11 bring it today. We don't have any witnesses here. We  
12 don't have any evidence to present. His mental  
13 evaluation --

14 THE COURT: Are you raising his mental capacity?

15 MR. STIDHAM: Your Honor, not as a defense to the  
16 charges that are filed but as a factor to be  
17 considered by the Court in ruling on the motion to  
18 transfer.

19 THE COURT: I'm going to enter an order having  
20 him taken immediately to the first available location  
21 in the State Hospital system to conduct a mental  
22 evaluation for his fitness to proceed.

23 MR. STIDHAM: We object to that --

24 THE COURT: That will be overruled.

25 MR. STIDHAM: Judge, according to --

1 THE COURT: If you are even suggesting that that  
2 is a factor for this Court to consider, then this is  
3 going to be my ruling.

4 MR. STIDHAM: Judge, according to nine  
5 twenty-seven three sixteen -- excuse me -- three  
6 eighteen -- the factors to be considered by the Court  
7 -- seriousness of the offense, whether violence was  
8 employed, whether the offense is part of a repetitive  
9 pattern of adjudicated offenses. Rehabilitation,  
10 prior history, character traits, mental maturity.

11 Mental maturity does not suggest his fitness to  
12 proceed is in question nor does it suggest that we  
13 intend to --

14 THE COURT: Does that raise his competency to  
15 proceed -- mental maturity?

16 MR. STIDHAM: No, your Honor. It simply says  
17 what is his maturity and what is his --

18 THE COURT: Are you alleging and portraying to  
19 the Court that he doesn't have sufficient mental  
20 maturity to understand the nature of the proceedings,  
21 aid and assist in his defense?

22 MR. STIDHAM: Not at this point, your Honor, no.

23 THE COURT: All right. What is the problem of  
24 going forward?

25 MR. CROW: Your Honor, one of the elements of

1 mental maturity does deal -- does not deal with his  
2 competency to go forward -- it does deal with -- as  
3 this is a juvenile case -- not necessarily his  
4 chronological age but his mental maturity and  
5 therefore --

6 THE COURT: I'm asking you gentlemen as officers  
7 of the Court who have had several weeks now to deal  
8 with him -- are you telling me you are having a  
9 problem with him understanding your questions, your  
10 advice?

11 MR. STIDHAM: Judge, as an officer of the Court,  
12 I would submit to the Court that as of today, October  
13 19th, I'm convinced that Mr. Misskelley is of limited  
14 intellect. I don't know what his mental capabilities  
15 --

16 THE COURT: I don't think you or me either one  
17 are going to be able to find out unless we send him to  
18 someone who calls themselves an expert in that area.  
19 Whether or not they can do it or not, I don't know,  
20 but we usually accept it in court.

21 MR. STIDHAM: Your Honor, that is an issue that I  
22 would like to raise for myself and I would like to  
23 have the possibility to have a forensic evaluation  
24 done at our expense.

25 Obviously he is indigent, and we would ask the

1 Court to pay for that, but I know what the Arkansas  
2 law is on that issue. Arkansas law says he goes to  
3 the State Hospital. I object to him going to the  
4 State Hospital because I don't think the people at the  
5 State Hospital are qualified to render a forensic  
6 evaluation.

7 THE COURT: If you want a forensic evaluation on  
8 his mental capacity done, I'm going to send him to the  
9 State Hospital. I will permit you to have an outside  
10 examination done if you choose to after seeing that  
11 report. I may even order the county to pay for it.

12 MR. STIDHAM: We will have an opportunity for an  
13 independent evaluation?

14 THE COURT: Yes, sir, after you have had an  
15 opportunity to read the results and if you still feel  
16 it is necessary, then I'm going to allow you to do it  
17 but if you are raising that right now, then I'm going  
18 to order that evaluation conducted as soon as  
19 possible, and I am going to ask the prosecutor to  
20 contact a local regional health office and see if the  
21 short type examination can be done, whether they can  
22 give us an opinion whether he needs the 30 day  
23 evaluation. All of that time will be charged against  
24 Mr. Misskelley.

25 MR. STIDHAM: Your Honor, we didn't ask for it.

1 THE COURT: If you are raising it, you're asking  
2 for it.

3 MR. STIDHAM: We haven't raised it yet.

4 THE COURT: Maybe I'm misunderstanding what  
5 you're telling me then.

6 MR. STIDHAM: Your Honor, if I may have a few  
7 minutes to find the statute --

8 THE COURT: I'm looking at nine twenty-seven  
9 three eighteen.

10 MR. STIDHAM: The code provision with regard to  
11 when the Court orders mental evaluation and that deals  
12 with the insanity defense. The thing I'm concerned  
13 about, Judge, is the prejudice that will result to the  
14 defendant, Mr. Misskelley, when the press starts  
15 printing news reports tomorrow that the Court has  
16 ordered a psychiatric evaluation of Mr. Misskelley.

17 THE COURT: I don't know that that even attaches  
18 any stigma to anyone any more.

19 MR. STIDHAM: Judge, what I'm merely saying is I  
20 would like to have the opportunity to at least finish  
21 the discovery process, to conduct some --

22 THE COURT: What is it you want to do? What  
23 additional discovery are you requesting of the State?

24 MR. STIDHAM: Your Honor, I filed a motion to  
25 conduct the discovery depositions of the officers that

1 interrogated Mr. Misskelley. I have asked to look at  
2 the police files involving similar crimes from around  
3 the country.

4 Judge, our defense is going to be that Mr.  
5 Misskelley wasn't there and that this confession was  
6 coerced and involuntary.

7 Judge, we have the right under the law to examine  
8 the police files with regard to similar crimes. There  
9 is a recent Supreme Court decision, Zinger versus  
10 State, that outlines the admissibility of evidence of  
11 similar crimes. There may not be anything out there,  
12 but we at least have the right to look through that.

13 Also, your Honor, the police are in possession of  
14 videotapes of two suspects who left West Memphis days  
15 after the homicide and who flunked polygraph  
16 examinations when interviewed by police in Oceanside,  
17 California. We haven't seen those yet. We've got to  
18 look at those. The prosecution has agreed to let us  
19 view that information.

20 There's still a lot of work to be done, Judge.  
21 We are still only five months away from the actual  
22 homicides themselves. We have not had a chance to  
23 conduct our examination and research this thing  
24 properly.

25 THE COURT: Are you objecting to a speedy trial?

1 MR. STIDHAM: Judge, if I have to ask for a  
2 continuance, I will certainly do that to protect my  
3 client's interest. I don't --

4 THE COURT: How much time are you asking to  
5 continue this hearing?

6 MR. STIDHAM: Judge, I'd like to have, well,  
7 first of all that probably would depend on whether the  
8 State is going to push for a trial date for us in  
9 December or January like it indicated. Judge, we  
10 don't think we can be ready. We like the February  
11 21st court date, but I understand the problem it is  
12 going to impose upon the State --

13 THE COURT: Your court date is going to be  
14 January 18th if I don't rule on your other motions to  
15 the contrary. If I rule to transfer it if and when  
16 you are ready for me to hear it, then of course that  
17 date won't be applicable. But it is going to be  
18 January 18th through the 28th.

19 MR. STIDHAM: Judge, can we have sixty days if  
20 you're going to impose a trial date on January 18th?

21 THE COURT: No, sir, you cannot have sixty days.  
22 Today is the 19th of October. I'm going to give you  
23 until the 16th of November and at that time I'm going  
24 to hear your motion to transfer, and I am either going  
25 to order a psychiatric evaluation on that date or if

1 the State asks for it earlier, I will order it and I  
2 am going to continue it on your motion -- the 16th --  
3 and that delay specifically is going to be charged  
4 against your client.

5 MR. STIDHAM: Yes, sir, your Honor. I'd like the  
6 record to reflect that we didn't ask for an  
7 evaluation.

8 THE COURT: You're asking for a continuance and  
9 that continuance could very well bring up the  
10 necessity of a psychiatric evaluation which would then  
11 probably take another thirty days so I don't know what  
12 else to do. I'm trying to give you as much latitude  
13 as you want. I will continue it to the 16th, and you  
14 are going to be directed to appear in Osceola at 1:30  
15 for a hearing on the motion to transfer to juvenile  
16 and any other applicable motions that need to be heard  
17 in Mr. Misskelley's case at that time.

18 MR. FOGLEMAN: Your Honor, there was an  
19 evaluation in '87. It is kind of dated but there was  
20 an evaluation in '87. We have the report.

21 MR. STIDHAM: On Mr. Misskelley.

22 THE COURT: In regard to your motion for  
23 discovery, gentlemen, is there any reason why you  
24 cannot give him all that stuff?

25 MR. FOGLEMAN: Your Honor, on the other crimes

1 there is a concern because these are unsolved crimes  
2 and it is not that they are related to this one. It  
3 is just that they are unsolved child murders from  
4 around the --

5 THE COURT: I'm going to order you to let them  
6 review those files, and they are going to be ordered  
7 and directed that they are not to disclose any  
8 information that may be derived from those files, and  
9 you will not be permitted to utilize it in court  
10 unless you first seek permission of the Court and  
11 demonstrate to the Court that it has some substantive  
12 value in this particular case.

13 MR. FOGLEMAN: Your Honor, could you give a  
14 specific time?

15 THE COURT: Before the 16th of November.

16 MR. FOGLEMAN: I know but I mean a specific date  
17 for that to be done because the officers can't be  
18 sitting around waiting for them to come --

19 THE COURT: You gentlemen understand that I don't  
20 want any notes given to newspapers. I don't want any  
21 conversation with anyone. You can review it and if  
22 you find some relevant evidence to this case, then of  
23 course you will be permitted to use that. I don't  
24 have any idea what is in it.

25 MR. PRICE: Your Honor, would that apply to all

1 three cases?

2 THE COURT: Sure.

3 MR. STIDHAM: Your Honor, in our motion we  
4 suggested that the Court could solve the State's  
5 problems by issuing a protective order to that effect.  
6 We certainly have no --

7 THE COURT: I haven't read your motion but that's  
8 sure what I'm going to do. This will apply to all  
9 parties.

10 MR. FOGLEMAN: Judge, is this for reviewing the  
11 information or providing copies?

12 THE COURT: Well, again it seems to me it would  
13 be easier for you to go up there and peruse through it  
14 if they give you a place to look at it. How much is  
15 there?

16 MR. GITCHELL: Several cases.

17 MR. STIDHAM: Judge, it seems like we could make  
18 photocopies, go back to the office and analyze it.  
19 Obviously if we are under a protective order --

20 THE COURT: I'm going to let you copy the ones  
21 that you think might lead to or produce relevant  
22 evidence.

23 MR. STIDHAM: Your Honor, the second prong of our  
24 motion deals with we have asked the State to allow us  
25 to examine the personnel files of the interrogating

1 officers.

2 Again, we have filed a motion to suppress and the  
3 nature of our motion to suppress is that the two  
4 statements made by Mr. Misskelley are involuntary.

5 THE COURT: Well, officers are not on trial, but  
6 I understand the nature of your defense to be that it  
7 was a coerced confession, and you're looking to see if  
8 there are any disciplinary actions against those  
9 officers for coercion against detainees?

10 MR. STIDHAM: I want to know whether they beat up  
11 an old lady last year, whether they --

12 THE COURT: I'm going to do this. The personnel  
13 files -- and certainly the officers are not the  
14 subject matter of this trial -- I will allow you in  
15 the presence of the prosecuting attorney and the chief  
16 of police to physically review the files and make  
17 handwritten notes. But again you're not to reveal in  
18 any way or transmit any information pertaining to  
19 those officers without prior written Court approval or  
20 you will be dealt with severely by the Court.

21 MR. STIDHAM: I understand, your Honor, and in  
22 our motion we asked that a protective order be issued.

23 THE COURT: I will do that and, again, you're not  
24 going to be permitted to utilize that in Court until I  
25 have an in-camera hearing as to the relevancy of those

1 matters.

2 MR. STIDHAM: Certainly, your Honor.

3 THE COURT: And you will not be allowed to  
4 photocopy any piece of their personnel files. You may  
5 make your handwritten notations and again the  
6 disclosure of those to anyone and by any source is  
7 going to be looked after by the Court very severely.  
8 I mean I'm going to find out who disseminated it and  
9 then I'm going to deal with you.

10 MR. STIDHAM: Judge, that won't be a problem.

11 THE COURT: All right. I will permit that under  
12 those conditions.

13 MR. DAVIS: Your Honor, what I would like to do  
14 is be sure and write a precedent as to an order  
15 regarding those motions in a timely fashion.

16 THE COURT: Fix a precedent for that order, and I  
17 want it by the end of the week, and I want you to  
18 deliver it to the prosecutor to approve and then  
19 mailed to me.

20 MR. STIDHAM: Your Honor, that leads us to the  
21 third prong of our problems with discovery.

22 THE COURT: All right.

23 MR. STIDHAM: I filed a motion to take discovery  
24 depositions of interrogating officers. At the  
25 September 27th hearing the Court stated that if we

1 could find some authority that we could present this  
2 to the Court. We have found some authority in Indiana  
3 as well as a U. S. Supreme Court case which is  
4 Wardius versus Oregon.

5 Basically, your Honor, the Wardius case the  
6 Supreme Court said that discovery is a two-way street,  
7 that the defendant should have the same rights to  
8 conduct discovery and investigate that the State  
9 enjoys.

10 Also, I would like for the record for the Court's  
11 purpose of reviewing the motion read a portion of the  
12 Wardius decision into the record.

13 MR. FOGLEMAN: Your Honor, I thought this was  
14 something we were not going to discuss today since we  
15 had only been provided that today and have not had a  
16 chance to have any kind of response.

17 THE COURT: What I will do on this is you can  
18 send me your brief on this point and I will decide it  
19 later.

20 MR. FORD: Your Honor, I would like to state on  
21 the record that we have previously filed -- it was  
22 discussed at the 27th hearing -- our desire to take a  
23 discovery deposition of the -- Inspector Gitchell,  
24 Detective Ridge and Detective Mike Allen.

25 THE COURT: And I think at that time I ruled that

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1 I would make them available to give their statement to  
2 you if they chose to do so.

3 MR. FORD: Your Honor, what I think the Court  
4 stated -- I think that's where Dan is coming from --  
5 is that led to a remark, "If you can find some  
6 authority to allow them to take their sworn statements  
7 the way that the prosecutor can," that you will do  
8 that. I think that's why we are here.

9 THE COURT: I'm going to allow the prosecutor an  
10 opportunity to brief that matter and respond before I  
11 rule on it. So let's move on to something else.

12 MR. STIDHAM: Your Honor, may I read this part of  
13 the opinion into the record assuming we will have  
14 another chance to make arguments?

15 THE COURT: Go ahead.

16 MR. STIDHAM: Your Honor, the Court in Wardius  
17 held that, "In the absence of a strong showing of  
18 state interest to the contrary, discovery must be a  
19 two-way street. The state may not insist that the  
20 trial be run as a search for the truth so far as the  
21 defense witnesses are concerned while maintaining  
22 poker game secrecy for its own witnesses."

23 Your Honor, we submit that we should be entitled  
24 to do the same that the State has the right to do, and  
25 we cannot prepare for an adequate defense if we don't

1           have an opportunity to discuss this with the officers  
2           under oath.

3           The Indiana courts have recognized, your Honor,  
4           that this is a substantial right of the defendant and  
5           that they routinely grant defendants authority to  
6           conduct depositions of the officers and there is a  
7           case --

8           THE COURT: This is not Indiana or California so  
9           -- I will listen to what the State has to say and then  
10          rule on that. I have ruled on that same issue  
11          previously and I am probably not inclined to change my  
12          rulings from what I have in the past. Anyway, brief  
13          it and let me see it.

14          Call your next witness.

15          MR. FOGLEMAN: Bryn Ridge.

16                                BRYN RIDGE

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

19                                DIRECT EXAMINATION

20          BY MR. FOGLEMAN:

21          Q       Will you please state your name and occupation?

22          A       Bryn Ridge, detective for the West Memphis police  
23          department.

24          Q       Did you participate in the investigation of the  
25          disappearance of the three murder victims on May the 5th, 1993?

1 A Yes, I did.

2 Q Were you present when the three victims were discovered?

3 A Yes.

4 Q If you would, describe briefly to the Court the condition  
5 of the bodies, where they were found and the manner in which  
6 they were found?

7 A The bodies were found in a wooded area known as Robin Hood  
8 which is on the northern limits of West Memphis between a  
9 residential neighborhood and the expressway -- I-40.

10 Q Is it in a wooded area?

11 A Yes, it is.

12 Q Specifically where were they found?

13 A In a ditch in water.

14 THE COURT: Just a minute.

15 (REPORTER FROM THE COMMERCIAL APPEAL ENTERING  
16 COURTROOM)

17 THE COURT: I'm not going to let you come in now.  
18 I told the officers that I would let the attorney come  
19 in and then I'd rule on it. I'm considering this a  
20 matter that could potentially be in Juvenile Court  
21 and, therefore, it is subject to be closed. As soon  
22 as we finish this, I'm going to open it up and  
23 everybody can come back in.

24 MR. SULLIVAN: Our lawyers are on the way.

25 THE COURT: When they get here, I will hear it.

1 MR. SULLIVAN: Thank you. (EXITING THE  
2 COURTROOM)

3 THE COURT: Go ahead.

4 BY MR. FOGLEMAN:

5 Q They were found in water in a ditch?

6 A Yes.

7 Q Approximately how deep was the water?

8 A Two to two and a half feet deep.

9 Q Were the bodies of the victims visible from out of the  
10 water?

11 A No, sir.

12 Q How were they discovered?

13 A A shoe was found floating in the water and a boy scout cap  
14 was found floating in the water. As officer Mike Allen  
15 approached those items that were floating in the water, he found  
16 -- he had struck something with his foot.

17 Q In the water?

18 A Yes, sir. When he raised his foot, the naked body of the  
19 first victim was located.

20 Q Were the three victims then removed from the water?

21 A Yes.

22 Q Were they clothed?

23 A No, sir.

24 Q Did any of them have any clothing on?

25 A No clothing except the shoestrings they were tied with.

1 Q How were they tied?

2 A Hand to foot on each side. The right hand was tied to the  
3 right foot at the ankle. The left hand was tied to the left  
4 foot at the ankle.

5 Q Was there any evidence of violence?

6 A Yes.

7 Q Describe for the judge the evidence of the violence.

8 A All of the victims showed wounds to the head, face. There  
9 were lacerations, contusions. There was bleeding from the nose  
10 and the ear of the first victim. There was cuts to the side of  
11 the face of the second victim.

12 Q When you say "cuts," what do you mean? Just a few little  
13 pick marks, or what do you mean?

14 A No, sir. It was serious cuts that were five to five and a  
15 half inches long which just exposed part of what I call the  
16 jawbone, in that area. One of the victims was as if his penis  
17 had been removed. My terms, the penis was removed. There were  
18 pick marks all over the bodies.

19 Q When you talk about "pick marks," what are you talking  
20 about?

21 A It appears like a double edge knife will be used to  
22 repeatedly stab -- peck at the skin of the victims with entry  
23 having been gained to the flesh.

24 Q Where were those little stab wounds?

25 A Well, on the one with the cutting to his face, it was like

1 all away around the wound. He had marks on his eyelids. The  
2 one that the penis was removed was all the way around -- was  
3 about a foot in diameter around the genital area.

4 Q Are you talking about just three or four of these stab  
5 wounds?

6 A No, sir. I would call it hundreds.

7 Q Did you bring photographs of the scene there?

8 A Yes, I did.

9 Q Did you at my request have those photographs with you?

10 A Yes.

11 MR. FOGLEMAN: Your Honor, we will mark these as  
12 one exhibit.

13 MR. FORD: Your Honor, these are introduced for  
14 the purpose of this hearing only and not for the  
15 purpose of the trial?

16 THE COURT: Yes. They may be received for  
17 purposes of this hearing.

18 (STATE'S EXHIBIT SIX IS RECEIVED FOR PURPOSES OF  
19 THIS HEARING)

20 MR. PRICE: Judge, is it the Court's ruling that  
21 this being an in-camera proceeding will prevent anyone  
22 from making a copy of these exhibits or getting a  
23 transcript of the court reporter?

24 THE COURT: That's correct.

25 BY MR. FOGLEMAN:

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1 Q I know they have been received but do they fairly and  
2 accurately portray the victims as they appeared to you that day?

3 A Yes, sir.

4 Q The victims were how old?

5 A Eight years old.

6 Q In the course of your investigation did you participate in  
7 taking a statement from one Jessie Misskelley?

8 A Yes, I did.

9 Q Who did he tell you did the stabbing?

10 MR. FORD: I object, your Honor, because it is  
11 hearsay. It is hearsay. He's asking what did Jessie  
12 Misskelley say.

13 THE COURT: Gentlemen, I have already heard that  
14 testimony from the statement that I heard that was  
15 attributable to Mr. Misskelley at the last hearing so  
16 I will sustain your objection, but I'm not going to  
17 discount what I have already heard.

18 MR. FORD: Is the Court going to consider what it  
19 heard at a previous hearing --

20 THE COURT: I certainly am --

21 MR. FORD: -- in terms of this issue?

22 THE COURT: Yes, sir.

23 MR. FORD: Your Honor, we object to that  
24 consideration as to things outside the record.

25 THE COURT: The sworn testimony that is a matter

1 of record is what I'm speaking of.

2 MR. FORD: I'm talking about --

3 THE COURT: I'm not going to consider anything  
4 that's outside the record at all. I'm only going to  
5 consider what is before the Court and what has been  
6 before the Court under a competent record and sworn  
7 testimony.

8 Anything else of this witness?

9 MR. FOGLEMAN: Not for the State, your Honor.

10 (WITNESS EXCUSED)

11 MR. FORD: Your Honor, let me further clarify my  
12 record. The evidence that the Court is going to  
13 consider was adduced at a hearing with respect to the  
14 admissibility of certain evidence that was taken from  
15 the residence of Mr. Baldwin pursuant to a Search  
16 Warrant. That Search Warrant had to be corroborated  
17 based -- it had to have some evidence to establish  
18 that.

19 Although that evidence comes in for the purpose  
20 of that, that does not make it admissible.

21 THE COURT: What are you telling me? You don't  
22 want me to consider the testimony that I heard at the  
23 Search Warrant hearing that I have already heard?

24 MR. FORD: Judge, whether or not a statement is  
25 admissible determines whether or not a neutral and

1 detached magistrate had reasonable cause to issue a  
2 warrant and -- the Court obviously has to hear what he  
3 was told.

4 THE COURT: That's right.

5 MR. FORD: In order to do that, hearsay  
6 statements invariably must come in but in order to  
7 determine whether or not under the Juvenile Code this  
8 juvenile --

9 THE COURT: I told you I wasn't going to allow  
10 questions to be asked of this witness, and I don't  
11 think he did ask it.

12 MR. FORD: If the Court is going to elicit -- if  
13 the Court already knows the answer but sustains the  
14 objection but listens to it anyway on the other side  
15 of its -- you know one ear --

16 THE COURT: Call your next witness. I will just  
17 take under consideration what I hear today.

18 MR. FORD: You are only going to consider what  
19 you hear today?

20 THE COURT: Only what I hear today on this  
21 particular issue.

22 MR. FOGLEMAN: Your Honor, that's all we have.

23 THE COURT: Any witnesses?

24 MR. FOGLEMAN: Actually, your Honor, it is their  
25 burden. They are supposed to go forward.

1 MR. FORD: Your Honor, based on Arkansas Code  
2 Annotated nine -- twenty-seven three eighteen,  
3 "Factors that the Court should consider in determining  
4 whether or not a case should be transferred are the  
5 seriousness of the offense and whether violence was  
6 employed by the juvenile in the commission of the  
7 offense."

8 Your Honor, clearly, by the photographs you have  
9 a serious offense. Homicide -- serious injuries in  
10 addition to death on three minor children eight years  
11 of age.

12 However, there's been no evidence presented here  
13 today on this record that indicated in any way  
14 violence was employed by this defendant.

15 Even taking into consideration other evidence  
16 that was presented which we object to, your Honor,  
17 that evidence that has been presented in no way  
18 indicates Jason Baldwin performed the violence as  
19 opposed to an allegation of his mere presence and  
20 complicity as opposed to whether or not he was the  
21 person who employed the violent force. We have no  
22 evidence at either hearing.

23 Secondly, "Whether the offense is part of a  
24 repetitive pattern of adjudicative offenses which  
25 would lead to the determination that the juvenile is

1 beyond rehabilitation under existing rehabilitative  
2 programs."

3 He has never been at any time placed in a  
4 rehabilitative program. He has been on probation. He  
5 has never been sent to the training school. This  
6 being charged with breaking and entering and criminal  
7 mischief is not part of a repetitive pattern to go  
8 from there to homicide.

9 Lastly, "The prior history, character traits,  
10 mental maturity and any other factor --"

11 Your Honor, we don't have anything other than the  
12 fact that a very serious offense occurred, and that of  
13 that very serious offense Mr. Baldwin stands accused.

14 The three factors in the code indicate this  
15 matter should be transferred to Juvenile Court and we  
16 so ask.

17 THE COURT: The Court will take a five minute  
18 recess. You can bring everyone back in, and I will  
19 announce my rulings.

20 (RECESS)

21 (RETURN TO OPEN COURT)

22 THE COURT: Mr. Stidham, in regard to your  
23 discovery motion, you are to prepare the precedent for  
24 those rulings.

25 MR. STIDHAM: Certainly, your Honor.

1 THE COURT: With regard to Mr. Misskelley's  
2 motion to transfer to juvenile, that will be continued  
3 on defense motion to November 16th, at 1:00 p.m. in  
4 Osceola.

5 Gentlemen, I also need the change of venue order.

6 MR. FORD: Your Honor, I have an order for Mr.  
7 Baldwin for the Court today.

8 THE COURT: With regard to Mr. Baldwin's motion  
9 on which the Court just heard testimony, it will be  
10 the Court's finding that he is not entitled to a  
11 transfer to Juvenile Court.

12 I find that the seriousness of the offense was  
13 most serious grievous, heinous. The fact that there  
14 were three eight-year-old boys murdered in the fashion  
15 that the pictures depicted to the Court, the violence  
16 exhibited -- that certainly alone is enough to warrant  
17 that this charge be heard before a jury in Circuit  
18 Court.

19 I'm further making a finding that he was sixteen  
20 years of age at the time, that there had been previous  
21 juvenile considerations that meet the statutory test.  
22 That there's no apparent prospects that rehabilitation  
23 would be of any avail and that the findings that I'm  
24 making here today clearly convince the Court that this  
25 is a matter that should be tried in the adult court

1 before a jury and that the test of clear and  
2 convincing evidence is certainly met here.

3 What was the next motion?

4 MR. FORD: Motion to prohibit death qualification  
5 of the jury, your Honor.

6 The first motion that we would like the Court to  
7 consider, although it is one that has been frequently  
8 raised by defense counsel in cases where the State  
9 seeks the death penalty, we would like the Court to  
10 consider it for purposes of the record -- that is  
11 regarding the issue of whether or not the State should  
12 be allowed to death qualify the jury.

13 Your Honor, as the Court is clearly aware, in the  
14 voir dire process the State of Arkansas will be  
15 allowed to ask a potential juror whether or not they  
16 have the capabilities of imposing the death penalty in  
17 the event the evidence were to warrant it and the  
18 Court were so to instruct.

19 In the event they were to tell the Court, "No, I  
20 could not consider the imposition of the death  
21 penalty," they would at that time be excused.  
22 Irregardless as to whether they could fairly hear the  
23 evidence and the issues and try the case on the issues  
24 of guilt and innocence, if they would meet those  
25 criteria and be seated on the issue of guilt or

1 innocence but be unable to impose the death penalty,  
2 they would be excluded.

3 It is the opinion of defense counsel that to  
4 allow those people who would be fair jurors on the  
5 issues of guilt or innocence to be excluded merely  
6 because of their inability to impose the death penalty  
7 denies the defendant the right to a fair and impartial  
8 jury based upon a cross section of the community  
9 because a cross section of a community will  
10 necessarily include people which may not be able to  
11 impose the death penalty.

12 So to exclude everybody who has an objection to  
13 the death penalty on some moral, religious -- whatever  
14 reason it may be -- and have only people who are  
15 capable of imposing the death penalty takes away a  
16 certain cross section of the community to which Mr.  
17 Baldwin should be able to avail himself in the  
18 selection of a jury.

19 We would ask that the State not be allowed to  
20 death qualify the jury.

21 THE COURT: Is the State seeking the death  
22 penalty?

23 MR. DAVIS: Yes, sir, your Honor.

24 THE COURT: Motion will be denied. My procedure  
25 in death penalty cases -- the Court asks the initial

1 death qualifying questions pursuant to Witherspoon  
2 versus Illinois and all the subsequent cases to that  
3 case that have expounded upon the question of death  
4 qualification.

5 I will ask the initial questions. You in your  
6 individual voir dire may proceed to ask additional  
7 questions, but the Court will qualify the jury on that  
8 aspect.

9 There are a whole lot of cases, Mr. Ford, on the  
10 points you have raised that go into a whole lot more  
11 subtleties than you have discussed.

12 MR. FORD: I understand that.

13 THE COURT: It has been clearly ruled on by the  
14 Arkansas Supreme Court and the United States Supreme  
15 Court.

16 MR. FORD: Your Honor, I'm attempting to protect  
17 the record.

18 THE COURT: I understand. Go ahead.

19 MR. FORD: Your Honor, I have two motions which I  
20 showed to the Court in chambers. One is to quash the  
21 information on the grounds that the aggravating  
22 circumstances are vague and overbroad and, therefore,  
23 that the State seeking the death penalty -- the  
24 information should be quashed based on the fact that  
25 the --

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1 THE COURT: Are you talking about the statute  
2 itself that enumerates certain aggravating  
3 circumstances?

4 MR. FORD: Yes, sir.

5 THE COURT: The statute? Is that what you are  
6 challenging?

7 MR. FORD: Yes, which in essence makes the death  
8 penalty statute unconstitutional.

9 THE COURT: I'm going to deny your motion with  
10 this proviso. I'm not attempting at this time to rule  
11 as to what aggravating circumstances will be  
12 submitted, if any are submitted. That burden -- and I  
13 think I previously entered an order that the State  
14 will have to announce and declare what the aggravating  
15 factors were, what they were going to seek  
16 instructions for -- and, of course, I'm not barring  
17 any argument as to those nor am I making a ruling upon  
18 which aggravating circumstances might be tendered to  
19 the jury. Is that clear?

20 MR. FORD: That's clear.

21 THE COURT: Your objection as to the statute is  
22 denied. To the specifics, that is still an open  
23 issue.

24 MR. FORD: I have also filed a similar motion  
25 that in essence would declare the statute

1           unconstitutional by virtue of the fact that the death  
2           penalty is cruel and unusual punishment as prohibited  
3           by the Constitution of the United States and ask that  
4           the Court declare the statute unconstitutional.

5           THE COURT: That will be denied. It has been  
6           upheld as constitutional in Arkansas -- the Supreme  
7           Court -- and the courts of a number of other states.

8           MR. FORD: Your Honor, I also have filed a motion  
9           and although it has been considered by the courts, I  
10          would like to raise it for the record, your Honor,  
11          which states, "The defendant is charged with capital  
12          murder for the premeditated and deliberated killing of  
13          another person."

14          The statute has been amended for capital murder  
15          to where it is identical with the statute in its  
16          effect for first degree. If you have the purpose to  
17          kill someone, you get murder in the first degree. If  
18          you have the premeditated and deliberated purpose of  
19          killing someone, you can get capital murder.

20          There is no clear difference between capital  
21          murder for which Mr. Baldwin is charged and first  
22          degree. It leaves it entirely within the discretion  
23          of the prosecuting attorney's office as to whether or  
24          not you proceed to charge the defendant with capital  
25          murder or to proceed to charge him with first degree

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1 murder because the two statutes as defined are  
2 identical. Same conduct can meet both elements of  
3 both offenses.

4 In order for the jury to consider all applicable  
5 lesser included offenses, there must be a clear  
6 delineation in the mind of the jury what the elements  
7 -- how the two offenses are different. When there's  
8 no difference, then the Court -- then the jury has no  
9 ability other than to guess as to which one it wants  
10 to do.

11 Your Honor, I have in my motion cited some  
12 authority that states that there must -- Beck versus  
13 Alabama, a United States Supreme Court case, 447 U.S.  
14 625, a 1980 decision that says, "Where the lesser  
15 offenses are included as provided by law, there must  
16 be a standard to guide the jury to select among the  
17 degree of murder. Otherwise jurors are plainly  
18 invited to choose a verdict for a higher offense  
19 whenever they feel the lesser punishment is  
20 appropriate or a verdict for a lesser offense whenever  
21 they feel a more severe punishment is inappropriate."

22 It also cites Roberts versus Louisiana, a 1976  
23 case from the United States Supreme Court.

24 That's all we have here, your Honor -- capital  
25 murder in the first degree. Clearly, I believe we

1 will be entitled to submit both of those offenses to  
2 the jury. There is absolutely nothing to delineate  
3 between the two. In the absence of that delineation  
4 that statute is unconstitutional, and it should be so  
5 ruled, and if they cannot meet one of the other  
6 elements of capital murder -- one of the other  
7 enumerated aspects that could provide capital murder  
8 as opposed to murder in the first degree, they should  
9 only be allowed to submit this case on the charge of  
10 murder in the first degree.

11 THE COURT: It sounds to me like you're making a  
12 motion for a directed verdict as to capital murder and  
13 I have not even heard the evidence.

14 MR. FORD: No, your Honor. What I'm saying is  
15 that the statutes are identical. That regardless of  
16 the evidence that would be presented, the two statutes  
17 are identical.

18 THE COURT: Except that capital murder requires  
19 certain other additional elements that are not a part  
20 of first degree such as certain aggravating  
21 circumstances must explicitly be found by the jury and  
22 certain aggravating features have to be considered  
23 before they can return a verdict of capital murder so  
24 there's a big difference.

25 MR. FORD: Your Honor, that is for -- in order to

1 impose the death penalty they must find aggravating  
2 circumstances exist beyond a reasonable doubt, that  
3 aggravating circumstances outweigh mitigating  
4 circumstances beyond a reasonable doubt and that based  
5 on the totality of the evidence that the verdict that  
6 a punishment of death is reasonable beyond a  
7 reasonable doubt, but they don't get those three  
8 questions until they have already found the defendant  
9 guilty of capital murder but there's nothing --

10 THE COURT: I understand the issue and it has  
11 been raised and I believe ruled upon by our Arkansas  
12 Supreme Court. Did you want to respond?

13 MR. FOGLEMAN: Your Honor, just on the record, I  
14 do want it to be clear that there is a clear and  
15 distinct difference between capital murder and first  
16 degree, and it is recognized in the jury instructions.  
17 In fact there's even a comment that this is what  
18 distinguishes capital murder from first degree based  
19 on the definition of premeditation and deliberation  
20 which is not required for first degree.

21 THE COURT: Yes. That is the way I understand it  
22 as well, Mr. Ford.

23 MR. FORD: My argument goes to the fact that  
24 based on the way I read that definition of  
25 premeditation and deliberation and the way I read the

1 definition of purposeful conduct under AMCI  
2 instructions, there is no difference.

3 THE COURT: I don't think -- your argument is not  
4 new or novel, and it has been raised before, and I  
5 deny the motion.

6 MR. FORD: Your Honor, I have also filed a motion  
7 to declare the death penalty statute unconstitutional  
8 which would prohibit the State from proceeding in a  
9 bifurcated trial since they are seeking the death  
10 penalty in light of the fact that the current reading  
11 of the death penalty provisions of the statute contain  
12 a binding construction. Under Arkansas Code Annotated  
13 five-four-six oh three it states, "That the jury shall  
14 impose a sentence of death if it unanimously returns  
15 written findings" -- and one, two, three.

16 Your Honor, I am of the opinion that is a binding  
17 instruction and if it is a binding instruction, it is  
18 inappropriate. The law disallows such.

19 THE COURT: I believe that instruction is on the  
20 sentencing phase alone.

21 MR. FORD: Yes, sir.

22 THE COURT: Not after a finding of guilt or  
23 innocence.

24 MR. FORD: That's correct your Honor. But if  
25 that is to be declared unconstitutional, then we don't

1 have the need for a bifurcated trial, nor do we have  
2 the need to go through the death qualification of the  
3 jury.

4 THE COURT: I'm going to deny the motion. That's  
5 been raised as well and ruled upon.

6 MR. FORD: Your Honor, we have gone through these  
7 in chambers. The next one to be considered is a  
8 motion to compel disclosure of aggravating  
9 circumstances information.

10 THE COURT: I think I have already ruled on that.

11 MR. FORD: But I'm going through them, your  
12 Honor, as they have been filed.

13 THE COURT: I'm going to grant that motion.

14 MR. FORD: It is my understanding that the State  
15 is to provide us with a list of each and every  
16 aggravating circumstance that they plan to submit to  
17 the jury.

18 THE COURT: That's correct.

19 MR. FORD: Your Honor, in a very similar motion  
20 we would ask that they -- when the jury charge is  
21 prepared and submitted, that they not be given the  
22 entire list of aggravating circumstances.

23 THE COURT: I already granted that motion. Only  
24 the ones that are applicable to the facts and only the  
25 ones that are stated by the prosecution and reviewed

1 by you and discussed by the Court are going to be  
2 given. Only the ones that are applicable and anything  
3 they think might be applicable and you disagree with,  
4 we are certainly going to have an in-camera hearing on  
5 that before it is submitted at jury instruction time.

6 MR. FORD: Thank you. Your Honor, we ask that we  
7 be allowed to make both opening and closing statements  
8 -- arguments in the penalty phase in addition to the  
9 trial of the case in chief.

10 THE COURT: That's no problem. I grant that  
11 motion is what I'm saying when I say, "no problem."

12 MR. FORD: I assumed that is what you meant, your  
13 Honor.

14 Your Honor, I don't know if the Court would like  
15 to consider this now or at the time we go over the  
16 aggravating circumstances, but we have filed a motion  
17 regarding being able to present victim impact evidence  
18 to the jury.

19 THE COURT: I'm not real familiar -- we mentioned  
20 that in the back room when we were trying to choose  
21 the order of the motions to be presented.

22 There are some recent Supreme Court  
23 pronouncements on that very issue that does allow  
24 victim impact statements to some degree with provisos  
25 attached to it under what circumstances. I can't

1 remember them all now, and I don't want to rule on it,  
2 but that is certainly a matter we could take up at the  
3 time of the trial and should the need arise.

4 MR. FORD: We can just reserve that ruling or  
5 preserve the right to give additional authority once  
6 we get -- if we get to that stage of the proceedings.

7 THE COURT: All right.

8 MR. FORD: Your Honor, the next motion I have  
9 filed is a motion to disclose past and present  
10 relationships and associations and ties with the  
11 prosecuting attorney's office with prospective jurors.  
12 We discussed that in chambers, your Honor, but what I  
13 would like for this Court to direct -- and I am  
14 willing to wear the same shoes -- that we be required  
15 to disclose to opposing counsel and to the Court  
16 associations or relationships, past or present, that  
17 we have with a particular juror because I'm sure that  
18 -- that all other counsel is aware as the Court is  
19 that there are times that jurors sit there in silence  
20 when they know something all about -- they have  
21 relationships that exist between the attorney who is  
22 asking questions or not asking questions and they will  
23 -- where the question is not asked through a long,  
24 lengthy, protracted voir dire --

25 THE COURT: I'm going to ask voir dire questions

1 about knowledge, familiarity, associations, business,  
2 professional, social or otherwise with all the lawyers  
3 involved in the case as well as the defendants and the  
4 witnesses.

5 MR. FORD: But, your Honor, I'm asking that -- I  
6 know of circumstances where jurors sat in silence and  
7 have not answered those questions truthfully but that  
8 each attorney at least Mr. Wadley and myself -- we'd  
9 ask the same for the prosecuting attorney.

10 THE COURT: I'm not going to enter an order to  
11 that effect, but I will direct the attorneys -- I  
12 guess that is an order -- if you know of or are aware  
13 of any disqualifying association with a prospective  
14 juror that you are obligated and duty bound to inform  
15 the Court.

16 MR. FORD: Your Honor, when you say  
17 "disqualifying," is that disqualifying for cause or  
18 disqualification that might go to the the exercise of  
19 a peremptory challenge? I'm asking if they go to  
20 church together, they play tennis together, that they  
21 might not answer that question.

22 It won't be a disqualifying factor if someone is  
23 potentially on the jury that was a fraternity brother  
24 with someone. They may just sit there. "They didn't  
25 ask me if I was a fraternity brother." I'm saying I

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1 will disclose --

2 THE COURT: I would not want mine on a jury.

3 MR. FORD: Nor would I but Mr. Fogleman may. I'm  
4 asking -- or Mr. Davis may. I'm asking as attorneys  
5 -- Mr. Wadley and I will disclose any association --

6 THE COURT: Do y'all have any problem with that?

7 MR. FOGLEMAN: Your Honor, for me I'm not going  
8 to know many people in Jonesboro or wherever the other  
9 trial is held since it has been moved from Crittenden  
10 County but to Mr. Davis -- he may have to spend a  
11 couple of years compiling everybody that he knows in  
12 Jonesboro and --

13 MR. FORD: We are only asking that it be revealed  
14 if one of those people is called and asked to sit in  
15 this box.

16 THE COURT: If I voir dire the jury in the  
17 fashion that I usually do, I ask about associations  
18 with lawyers. If one of them fails to mention that  
19 they know you, and you as a lawyer sitting at counsel  
20 table know that person and feel that they should have  
21 responded in the affirmative, then you have an  
22 obligation to tell the Court.

23 MR. FORD: That is sufficient. Would that go as  
24 to any questions I might ask in follow-up of those  
25 qualification questions?

1           THE COURT: Yes, gentlemen. As officers of the  
2 Court, if you know a prospective juror is not  
3 truthfully responding to the voir dire of either the  
4 Court or of a lawyer, you have got an obligation to  
5 tell me. And I don't think that changes anything.  
6 You have got that obligation.

7           MR. FORD: Your Honor, the next one in order was  
8 a motion to prohibit submission to the jury  
9 aggravating circumstances contained in five four six  
10 oh four, subsection three and subsection four.  
11 Perhaps the Court would want --

12           THE COURT: What specifically are you raising  
13 with that?

14           MR. FORD: Judge, Arkansas five four six oh four,  
15 subsection three, provides as an aggravating  
16 circumstance that the person previously committed a  
17 felony, an element of which was the use or threat of  
18 violence to another person or the creation of  
19 substantial risk of death or serious physical injury  
20 to another person.

21           I do not want the State to bootstrap themselves  
22 into an aggravating circumstance by saying that as an  
23 aggravating circumstance of the death of Mr. Byers was  
24 the homicide of Mr. Moore or vice versa to create --  
25 since they have all been joined as one offense by the

1 prosecution as opposed to three separate offenses.

2 THE COURT: Okay. I understand what you're  
3 saying. Does the State want to respond to that? Do  
4 you have any objection to it? If I understand what  
5 he's saying, you cannot use the death of one of the  
6 three as an aggravating circumstance for a capital  
7 murder charge against one of the others.

8 MR. DAVIS: Your Honor, that is one of those  
9 things we discussed earlier that obviously we won't  
10 get to until a later phase. We may not have any  
11 objection to it, but we'd like to have an opportunity  
12 to look at that more closely to determine that.

13 THE COURT: Let's hold that until we argue  
14 aggravation and mitigation.

15 MR. FORD: Your Honor, the same -- we have a very  
16 similar argument on subsection four so we will just  
17 reserve on both issues.

18 THE COURT: Okay.

19 MR. FORD: Your Honor, next was a motion to  
20 require the State to reveal any agreement entered into  
21 between the State and any prosecution witness which  
22 could conceivably influence his testimony, whether  
23 that be an agreement with a co-defendant or whether  
24 that be -- any type of agreement that they may make,  
25 in other words "we will do this" to encourage them to

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1 testify or as a condition of their testimony. Any  
2 such agreement that can be entered into -- that that  
3 agreement be made known to us.

4 THE COURT: If such an agreement is made by one  
5 of the co-defendants, then I'm going to require them  
6 to reveal the plea bargain arrangement or the  
7 protective order that would be entered by the Court.

8 In fact, if they are going to grant any kind of  
9 immunity or protective order to a plea bargain, they  
10 have to come to the Court, and I have to make an order  
11 to that effect ratifying that agreement, and you will  
12 be given a copy of the agreement.

13 MR. FORD: Your Honor, let me address one further  
14 concern. It has been my experience for prosecutors to  
15 say, "We will offer you this but we won't give it to  
16 you until you testify. We want you to testify in such  
17 a way."

18 And so there's really no deal at all until after  
19 they comply. So they get up there with this  
20 understanding that, "I have got to do this first but  
21 if I do this first, I'm going to get what's second,"  
22 and the deal is not really made. That is a deal  
23 that would be in addition to -- they are going to  
24 consummate it after the testimony.

25 MR. FOGLEMAN: Your Honor, I can cut this short.

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1 If there is a deal made with any defendant, they will  
2 be notified of whatever the deal is.

3 THE COURT: That is what I just said.

4 MR. FORD: I'd also like that to include any  
5 witness called on behalf of the State.

6 THE COURT: I don't want any of you making deals  
7 with the witnesses --

8 MR. FORD: There may be a witness out there who  
9 may be picked up tomorrow for another offense and they  
10 get him in here and they'll say, "I'm in trouble but I  
11 tell you what, if you will cut me some slack on this  
12 charge that I'm arrested for, I'll deliver some  
13 information to you that will help you in that big  
14 murder trial that you have got," and that is a witness  
15 who can provide some information and I would like  
16 those discussions, those plea bargains, those sort of  
17 related things that occur for any other witness that  
18 the State calls --

19 MR. FOGLEMAN: Your Honor, I don't have any  
20 problem with that. The only deal so far has been for  
21 protection -- to protect them.

22 MR. FORD: Is that motion being granted, your  
23 Honor?

24 THE COURT: Yes. I suppose so.

25 MR. STIDHAM: Your Honor, does that apply to all

1 three defendants?

2 THE COURT: Yeah. All of these motions will so  
3 far as they are applicable.

4 MR. FORD: Your Honor, I have also filed a motion  
5 to sequester the witnesses. I expect --

6 THE COURT: You tried to explain that to me in  
7 the back because I asked what did you mean by  
8 "sequestering the witnesses" --

9 MR. FOGLEMAN: Your Honor, the prayer looks like  
10 it is just asking for the rule.

11 THE COURT: That's what I asked. Were you asking  
12 for the rule to sequester the witnesses or were you  
13 asking for something in excess?

14 MR. FORD: I'm asking in addition to the rule  
15 that -- something that occurred out here previously  
16 just this afternoon that they not -- the witnesses --  
17 the witnesses probably will be known and that the  
18 witnesses that when they --

19 THE COURT: I think I know what you're talking  
20 about.

21 MR. FORD: That they -- when they -- that they  
22 not be --

23 THE COURT: I'm going to -- when the witnesses  
24 are announced, I'm going to give them the usual  
25 admonition and they'll be ordered not to discuss the

1 case with anyone. In fact if you will announce the  
2 witnesses now, I will enter a written order that they  
3 are not to discuss the case among themselves or with  
4 anyone whatsoever other than the lawyers involved in  
5 the case as they choose to talk to them. I will enter  
6 that order.

7 If that order is violated, they could be  
8 disqualified as witnesses. They could be found in  
9 contempt of Court and jailed. There are a number of  
10 other sanctions that the Court can impose for  
11 violation of the rule, as we call it -- the  
12 sequestering of the witnesses. I will enforce that if  
13 that is what you're asking me to do.

14 MR. FORD: That's what I'm asking, your Honor.

15 THE COURT: Invariably in any trial witnesses are  
16 going to be bumped into in the courtroom by witnesses,  
17 by spectators, people that are just curious, by the  
18 media, by lawyers and they converse -- sometimes about  
19 the case. Now when I find out about it, somebody is  
20 going to be in bad trouble.

21 The lawyers are going to be told that they are  
22 not to mess with the witnesses either. But you have a  
23 right to question them. No one else does.

24 MR. FORD: That's all I'm asking for, your Honor,  
25 is that they not be subjected -- once they be

1 identified that they not be subject to questioning and  
2 that they be directed not only to not answer questions  
3 of the press --

4 THE COURT: I wish I had entered that order about  
5 six weeks ago.

6 MR. FOGLEMAN: Your Honor, I was going to mention  
7 that the investigation is still going on. We would  
8 object to entering any kind of order like that now.

9 THE COURT: I'm not entering that order now. I  
10 am just saying that I will enforce the rule of  
11 sequestration of the witnesses and they will be told  
12 at the appropriate time when they are identified and  
13 we proceed to pick the jury that they are not to talk  
14 about the case with anyone except the lawyers, and  
15 only then if they choose to do so.

16 MR. FORD: Your Honor, the next motion was to  
17 insure a cross section of the community for the jury.  
18 We are asking that --

19 THE COURT: I'm going to follow the rules of  
20 procedure established by the legislature in selection  
21 of the jury. I expect to use the jury wheel in  
22 Craighead County if that is where the case is going to  
23 be heard. I will permit the clerk to submit the  
24 random numbers to the computer operator and to have  
25 not only the jury panel but the entire venire of

1           jurymen be selected by computer.

2           And when you asked me for a cross section, you  
3           are only going to get a cross section of jurors in any  
4           county in this state that are qualified and registered  
5           voters which I submit is not a cross section. We  
6           ought to have driver's license included and we ought  
7           to have Social Security numbers included and then you  
8           get a true cross section.

9           MR. FORD: Your Honor, I realize they have to be  
10          registered voters, but one of my concerns is that the  
11          Circuit Clerk's Office or Sheriff's Office -- some  
12          counties do it differently -- but they will call as  
13          opposed to mailing them. That they be --

14          THE COURT: They will -- they are going to be  
15          properly notified by law.

16          MR. FORD: -- That everybody on that list be  
17          notified as opposed to using the phone to do that.

18          THE COURT: They are going to be properly  
19          notified according to the statute.

20          MR. PRICE: Judge, one related issue. We would  
21          request that once the list of prospective jurors is  
22          compiled by the clerk, that that only be made  
23          available to the attorneys in the case and not the  
24          general public. I think there's been some inquiries  
25          already about who may be prospective jurors for the

1           upcoming trial --

2           THE COURT: To the extent that that is a public  
3 record --

4           MR. PRICE: It is our position that in a case  
5 like this, the Court can limit the list of prospective  
6 jurors only to those attorneys who --

7           THE COURT: We are only going to draw a jury for  
8 this case. We are not going to use the jury for  
9 anything else so I'm going to restrict it to the  
10 attorneys involved in the case.

11           If you are going to use private investigators or  
12 anything like that to do your jury poll, I want that  
13 discussed with the Court as to what contact any  
14 private investigator or other person can make to a  
15 juror that is on the list that you have been furnished  
16 a copy of.

17           MR. PRICE: We would not directly contact any  
18 prospective juror.

19           MR. FOGLEMAN: I was going to say we would object  
20 to any direct contact with any potential juror.

21           THE COURT: That's fine. That will apply to  
22 everyone then. Once you get the jury list, you're not  
23 to make any effort to contact them or -- if you find  
24 out any information about them, it will be from the  
25 questionnaire that they are required to fill out and

1 your voir dire in court and, of course, you can do  
2 your canvass of friends, neighbors and associates like  
3 you normally do, I guess, if you want to go to that  
4 depth.

5 MR. FORD: The defendant Jason Baldwin has filed  
6 a motion to suppress evidence which is in addition to  
7 the previous motion to suppress. We have filed a  
8 motion to suppress the evidence that was taken from  
9 his residence.

10 THE COURT: I already ruled on that, didn't I?

11 MR. FORD: I know you have, your Honor. We have  
12 also moved with regard to the use of a prosecutor's  
13 subpoena to require the presence of his mother and  
14 stepfather and brother for questioning, that they also  
15 used that same subpoena power, your Honor, to obtain  
16 records from his school that we feel was an abuse of  
17 the prosecutor's subpoena power, that he had every  
18 right of expectation of privacy in his school records,  
19 that that is something that should be prohibited, and  
20 we would like for the Court to consider whether or not  
21 that evidence could be properly used by the  
22 prosecution as well as any evidence that may be  
23 gleaned from obtaining those records.

24 THE COURT: You're talking about the prosecutor  
25 issued the prosecutor's subpoena to the school

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1 authorities to obtain the records of Mr. Baldwin?

2 MR. FORD: To obtain his grades and attendance  
3 records, to obtain access to any property that he  
4 might have in his locker.

5 THE COURT: How are you saying that by exercising  
6 that subpoena power he was prejudiced in any way or  
7 abused by the use of that process?

8 MR. FORD: Number one, your Honor, they used that  
9 to obtain access to his locker and I feel that his  
10 locker -- that's his private property and what is  
11 inside there he has an expectation of privacy that is  
12 protected by the Fourth Amendment.

13 Secondly, your Honor, they obtained access to his  
14 journal which contained the writing that he is  
15 required to write as a part of his class participation  
16 in journalism class. That he has an expectation of  
17 privacy to what is written in his journal and that the  
18 Fourth Amendment attaches to that and those writings  
19 should be suppressed.

20 THE COURT: Who was the custodian of the journal?  
21 Who had possession of it?

22 MR. FORD: Your Honor, I don't know other than  
23 they got it through school but that is something  
24 although he might not be the custodian of it, he is  
25 not permitted to be the custodian of it. It is a

1 school journal. He is required to write in this  
2 journal for a grade in the class. He then has to take  
3 those writings and give them to his teacher and then  
4 to have those writings, although they are in the  
5 possession of that teacher, they are his writings.  
6 There's still an expectation of privacy that the  
7 Fourth Amendment attaches to and to obtain a Search  
8 Warrant --

9 THE COURT: Mr. Fogleman.

10 MR. FOGLEMAN: Your Honor, first of all, school  
11 was out in regard to the locker. He had no more  
12 interest in the locker once school was out. The  
13 subpoena was not issued until after the school year  
14 had ended. In regard to his writings, number one, we  
15 contend that once the school year is over, he doesn't  
16 -- he no longer has an interest in those. They are in  
17 the possession of the school and they are with the  
18 records of the school and the prosecutor's subpoena  
19 power goes to more than just things that are open and  
20 obvious. They also go to things that the person may  
21 have an expectation of privacy. They go to bank  
22 records, telephone records, their own personal  
23 records.

24 Your Honor, we contend that the prosecutor's  
25 subpoena power when properly used as in this case goes

1 to any and all of those matters, and the proper way to  
2 contest that would be through a motion to quash the  
3 subpoena, and that was not done in this case.

4 MR. FORD: Your Honor, I don't think the  
5 prosecutor's subpoena power -- that statute  
6 circumvents the Fourth Amendment because the statute  
7 itself says other than consideration of constitutional  
8 limitations and the Fourth --

9 THE COURT: I'm going to deny your motion.  
10 However, I am going to reserve a ruling as to the  
11 admissibility of those items at trial at this time.

12 But if your motion is based purely on the attack  
13 of the power of the State to investigate by use of  
14 subpoena powers -- in fact that subpoena power gives  
15 them the right to subpoena bank records, telephone  
16 records and to hold the notification of that for  
17 ninety to a hundred and twenty days if they choose to  
18 do so.

19 It is an investigative tool that's been given to  
20 the State, and appropriately. They are the ones who  
21 have the burden to prove the case in court. It is a  
22 tool that they may utilize. Granted, it can be abused  
23 but I don't see anything you have told me that they  
24 have done in this case that would even remotely  
25 constitute an abuse of that power.

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1 MR. FORD: If the Court is going to rule the  
2 admissibility of any of those items --

3 THE COURT: I'm going to allow you to raise any  
4 constitutional argument you might have as to the  
5 admissibility in court of an item that might have been  
6 seized.

7 However, that will be limited to some other  
8 constitutional protection other than the attack on the  
9 method by which the information was gained by the  
10 subpoena power.

11 MR. FORD: If I'm arguing right now to you that  
12 that the Fourth Amendment attaches --

13 THE COURT: Then I'm going to reserve that ruling  
14 on the Fourth Amendment.

15 MR. FORD: Your Honor, I have previously filed a  
16 motion and the Court has ruled on that denying --

17 THE COURT: I tell you what. On the Fourth  
18 Amendment issue I'm going to deny that motion because  
19 I think statutorily they are given the power to do  
20 just exactly that. It is not an unreasonable  
21 intrusion upon the privacy of an individual to allow  
22 the State to seek records of that nature.

23 The whole concept of the Fourth Amendment is the  
24 reasonableness of the intrusion. I'm ruling that it  
25 wasn't unreasonable under the circumstances, that it

1 was appropriate and proper and that they exercised the  
2 due process provided to them to reach that  
3 information.

4 MR. FORD: Your Honor, I previously had objected  
5 to the prosecutor's subpoena being issued to Terry  
6 Grinnell and Gayle Grinnell, the natural and  
7 biological mother of the defendant in addition to the  
8 stepfather who stands in the position of loco parentis  
9 to the defendant.

10 Your Honor, Mr. Baldwin is sixteen years of age.  
11 Although the Court may have the power to try him as an  
12 adult in Circuit Court, he is still below the age of  
13 emancipation, and he is a minor. At that point in  
14 time it is our position that the attorney-client  
15 privilege exists between myself and Mr. Wadley and Mr.  
16 and Mrs. Grinnell. That in addition to that and that  
17 by issuance of that prosecutor's subpoena requiring  
18 their presence to be subjected to questioning under  
19 oath.

20 The Court is well aware that they are not allowed  
21 -- I am not allowed as attorney for Mr. Baldwin to be  
22 present. Mr. And Mrs. Grinnell are afforded the  
23 opportunity of having their own counsel and that  
24 counsel may be present.

25 The Court is well aware of the circumstances

1           wherein other counsel was appointed to represent them,  
2           thereby Mr. Wadley and I not being present. That  
3           questioning violates the attorney-client privilege and  
4           the fact that we will not be there to preserve that  
5           attorney-client privilege. That to question them  
6           violates that attorney-client privilege, violates Mr.  
7           Baldwin's rights to a fundamentally fair trial, to his  
8           right against self-incrimination.

9                       We feel that those statements should be  
10           suppressed for that basis and any evidence that may  
11           lead from that. The State has already provided us  
12           this information wherein they are going out in dragnet  
13           fashion trying to find any available holes that could  
14           possibly exist in the statements given to them by the  
15           Grinnells in an effort to whittle away at our defense  
16           on the front end, and they have done that in violation  
17           of all those rights and the attorney-client privilege  
18           and not only should those statements be suppressed but  
19           all this evidence that they are attempting to obtain  
20           now after obtaining those statements should be  
21           suppressed.

22                       MR. FOGLEMAN: Your Honor, number one, we have  
23           been cited no authority whatsoever saying that the  
24           attorney-client privilege extends to someone other  
25           than the defendant. And I see no authority for it.

1 I'm not aware of any authority for it and we think the  
2 motion to suppress should be denied.

3 THE COURT: Gentlemen, as I recall, this is the  
4 same issue that we had a telephone conference on. I  
5 hope that someone preserved it by recording it.

6 MR. FOGLEMAN: No.

7 THE COURT: Was it not recorded?

8 MR. FOGLEMAN: No. Your Honor, you talked to Mr.  
9 Ford --

10 MR. FORD: I was on my car phone. I talked to  
11 you, and I talked to Mr. Fogleman and we sort of --  
12 there was never a three-way conference call regarding  
13 --

14 MR. PRICE: Judge, there was one call that --  
15 with myself, Mr. Davis and Mr. Fogleman.

16 MR. FOGLEMAN: That's right.

17 MR. PRICE: But that was not recorded. We were  
18 taking notes.

19 THE COURT: Okay. Well, gentlemen, if you will  
20 recall the issue you are raising the way it came to  
21 the Court was that the defense attorneys -- Mr. Price,  
22 I don't think you took this position. In fact you  
23 took the position that perhaps you had a conflict with  
24 representing the parents.

25 MR. PRICE: We originally took the position that

1 we could represent them and I think your Honor's and  
2 Mr. Fogleman's position was that we had a conflict.

3 THE COURT: Well, I couldn't resolve that in my  
4 own mind as to whether or not there was a conflict  
5 because attorneys can represent different clients on  
6 the same matter.

7 It just seemed to me that suddenly persons that  
8 were being sought as witnesses were then being  
9 represented by counsel that had been appointed to  
10 represent an indigent defendant and to me it sounded  
11 bizarre and unusual, and I suggested that the Court on  
12 its own motion appoint other appointed counsel to  
13 advise and counsel the parents of the defendants who  
14 were potential witnesses, and it just seemed to me  
15 that that resolved any appearance of impropriety or  
16 any appearance of violation of attorney-client  
17 privileges and upheld the right of the State and  
18 approved the use of the prosecuting attorney's  
19 subpoena power to question those potential witnesses  
20 with attorneys present in the interrogation room, and  
21 the order further provided that defense counsel were  
22 to be given a copy of the questions and answers made,  
23 and I assume that that's been done.

24 MR. FOGLEMAN: Some of it has been done and some  
25 of it we have not had a chance to transcribe yet.

1 MR. FORD: Some of those statements haven't been  
2 provided to us in spite of the fact that they occurred  
3 sometime ago.

4 THE COURT: Two or three of you raised that case  
5 from where the State had been chastised by our Supreme  
6 Court for using the subpoena power at the time of  
7 trial and after identification of defense witnesses  
8 and the Court there ruled that they harassed the  
9 defense witnesses, and I ruled that that was not the  
10 case in this particular instance. That it was a fresh  
11 investigation, an on-going investigation and it was an  
12 appropriate use of the subpoena power of the State to  
13 make its case.

14 And while I didn't allow you as counsel for Mr.  
15 Baldwin to be present when witnesses were being  
16 questioned, recognizing that relationship with Mr.  
17 Baldwin, I did appoint separate counsel to advise with  
18 them, and I think that should meet the constitutional  
19 test so I'm going to deny your motion.

20 Gentlemen, that applies to the other two  
21 defendants as well. I think we had a similar  
22 conversation or you didn't even raise it, did you.

23 MR. STIDHAM: They haven't issued subpoenas for  
24 our --

25 THE COURT: Mr. Misskelley. But, Val, I want

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1 your position clear on that. You initially took the  
2 position that you had the right to and then you later  
3 agreed it might give the appearance of a wrongful  
4 appearance and that you accepted my position to  
5 appoint outside counsel. Is that correct?

6 MR. PRICE: Yes, sir, that's correct. You  
7 appointed Gerald Coleman, and he advised them prior to  
8 questioning.

9 MR. STIDHAM: With regard to the fact that no  
10 subpoenas have been issued for my client's parents,  
11 that issue doesn't affect us as of now. I would like  
12 to reserve the right to raise that at the appropriate  
13 time. Also, again that goes to our motion to conduct  
14 depositions of the officers. This is a criminal  
15 trial, not a poker game and we should have the same  
16 rights to interview witnesses that they do, and I  
17 don't want to waive anything.

18 THE COURT: I don't have any problem with you  
19 interviewing the witnesses.

20 MR. STIDHAM: But can we have that under oath?

21 THE COURT: This was a compulsory statement.  
22 There's quite a bit of difference. You have also been  
23 given the benefit of the officers' reports and their  
24 statements. All they do is gather factual  
25 information. When they testify in court, all they can

1 do is testify to what they found or have been told.

2 MR. STIDHAM: They have the right to go out and  
3 force people to come into their office and put them  
4 under oath, ask them questions and have a court  
5 reporter there. We don't have that power and it  
6 inhibits our ability to represent our client.

7 THE COURT: What has that got to do with you  
8 taking a sworn statement from the officer?

9 MR. STIDHAM: I doubt seriously that they --

10 THE COURT: You also don't have any burden.  
11 Remember the burden of persuasion is on the State, and  
12 that is the reason they are given the investigative  
13 powers and tools that they have.

14 MR. STIDHAM: Your Honor, the burden --

15 MR. FORD: The fact that we don't have the burden  
16 should not in any way diminish our rights of  
17 discovery. We ought to be on a level --

18 THE COURT: I believe in wide-open discovery and  
19 I think y'all have been beneficiaries of it. I  
20 believe -- in fact I required the State to give way  
21 more than they are required statutorily to do, and I  
22 have always done that even as a prosecutor. Way back  
23 then I believed in wide-open discovery. I would say,  
24 "Here it is. You look at it and I am going to use  
25 what I can out of it."

1           And I still believe that way, but you're asking  
2 me to compel officers to give you sworn discovery  
3 depositions. Do you want to be heard on that now --  
4 from the State?

5           MR. FOGLEMAN: Your Honor, they keep talking  
6 about a level playing field. We've provided them  
7 everything that we have. We have no right to find out  
8 what their investigation discloses, and so the playing  
9 field is not level, and it is balanced in their favor  
10 as far as discovery is concerned, and we do object to  
11 the requirement of something that is in the nature of  
12 a deposition of witnesses.

13           MR. STIDHAM: Judge, Mr. Misskelley was  
14 interrogated by the West Memphis police for somewhere  
15 around twelve hours, yet the transcript is nowhere  
16 near twelve hours long.

17           We should be entitled under due process, equal  
18 protection and other constitutional requirements and  
19 safeguards attributed to the defendant to talk to  
20 these officers and find out what happened in this  
21 other time frame.

22           THE COURT: You have got my permission to talk to  
23 them.

24           MR. STIDHAM: Do we have permission to ask them  
25 questions under oath and have a court reporter

1 present?

2 THE COURT: No. No, you don't.

3 MR. STIDHAM: Is the Court ruling on that issue  
4 today?

5 THE COURT: I'm taking that under advisement  
6 until y'all brief it.

7 I would like to know if there is any Arkansas  
8 case where you are permitted to do that. It would  
9 seem to me that that would relegate a criminal trial  
10 down to a contest of the thickest deposition. The  
11 courtroom is for bringing out those matters under  
12 oath.

13 MR. STIDHAM: Your Honor, even a civil defendant  
14 has the right to conduct depositions. It seems like  
15 someone who is facing the death penalty should be  
16 afforded the same opportunity to depose the witnesses  
17 against them.

18 THE COURT: You brief it for me and I will  
19 consider it because I believe in wide-open discovery.  
20 You are wanting to question just the officers?

21 MR. FORD: I'm asking your Honor to take the  
22 discovery deposition of Inspector Gitchell, Sergeant  
23 Ridge and Sergeant Mike Allen. Those are the three  
24 people who I want to take their deposition. I want to  
25 have the opportunity just like Mr. Fogleman has the

1 opportunity to question them under oath and then if  
2 necessary send out that dragnet to poke holes in their  
3 story the way they are doing trying to do that to the  
4 parents of my client.

5 MR. FOGLEMAN: Your Honor, they have got that.  
6 They have got everything that we've got. Every note  
7 -- everything.

8 MR. FORD: But it is not under oath, your Honor.  
9 It is not under oath.

10 MR. DAVIS: Your Honor, what they want to be able  
11 to do --

12 MR. FORD: If it is not under oath, they are --  
13 we are limited on how we can use those notes to  
14 impeach them on that witness stand.

15 MR. DAVIS: What they want to be able to do is  
16 take the investigative reports which are compiled by  
17 the officers -- and they are required to do that in  
18 their duty as law officers -- then take a statement  
19 under oath and then use all those items in a  
20 contradictory fashion when the officer takes the  
21 witness stand to use them in cross examination and  
22 impeachment.

23 What they keep ignoring when they talk in terms  
24 of a level playing field, they are very disgruntled  
25 and upset over the fact that we have subpoenaed

1 relatives of the defendants to find out what they know  
2 about this and then when they tell us, we go out and  
3 look into what they have told us, and we track down  
4 those stories.

5 We don't have access to the defendant. He's  
6 guaranteed those rights. We cannot go in and question  
7 them and take information from them, but we do have  
8 the right to talk to his parents. We do have the  
9 right to take that information and look into it, and  
10 that is not the equivalent of what they are saying --  
11 being able to go back in and not only get the  
12 officer's reports but then require the officer to be  
13 subjected to testimony under oath so they have all  
14 that to throw against him when he takes the witness  
15 stand.

16 THE COURT: All right. I'm not going to rule on  
17 that. Brief it. I have ruled previously on that.

18 MR. STIDHAM: Your Honor, in order to judicially  
19 be an economist, I would like to point out to the  
20 other attorneys and the Court that there's no Arkansas  
21 authority, either judicial or statutory, which  
22 provides a ruling for us to conduct a deposition under  
23 these fact circumstances.

24 THE COURT: Those issues have been raised before,  
25 and I guess the Court's declined to rule on it if they

1 haven't ruled on it. I have had it raised to me a  
2 dozen times.

3 MR. STIDHAM: Your Honor, the Wardius case, a  
4 United States Supreme Court case -- and also there's  
5 case law from Indiana and there's one case that is  
6 identical factually to the case at bar.

7 THE COURT: That's why I said I would take it  
8 under consideration. I'm not familiar with what you  
9 are quoting me, and I don't want to make a seat of the  
10 pants judgment on that issue right now that might set  
11 a precedent for future investigations in criminal  
12 cases, and I am not about to do it until I know  
13 exactly what I'm doing on it so you can give me your  
14 briefs, and then I will rule on it.

15 MR. FORD: Your Honor, the next matter that we  
16 would raise is a motion in limine with respect to a --

17 MR. FOGLEMAN: The motion about displays of  
18 approval or disapproval --

19 THE COURT: Yes. I can rule on that. The  
20 defense and prosecution are not going to be allowed to  
21 stand in their chairs or on the table or display any  
22 kind of emotional outburst either during the trial  
23 after the trial or at any phase of the trial and that  
24 will apply to all of you. I told you the fifteen yard  
25 penalty will apply for unnecessary demonstrations.

1 MR. FORD: Your Honor, we filed a motion in  
2 limine with respect to a knife that has been found at  
3 Marion public schools. That knife has been provided  
4 to the State of Arkansas --

5 THE COURT: Have not I already indirectly ruled  
6 on that by ruling on the locker business?

7 MR. FOGLEMAN: What you did back here was say  
8 that you were not going to consider that at this time  
9 until you knew all the evidence that was related to it  
10 whether it was admissible or not.

11 MR. FORD: I'd like to make my record if I might.

12 THE COURT: Go ahead.

13 MR. FORD: Your Honor, the State has in its  
14 possession a knife. This knife they have submitted  
15 for testing for comparison microscopically with other  
16 items that they have obtained from the residence of  
17 Jason Baldwin. I anticipate the results of some of  
18 those tests could be of factual benefit to the State  
19 of Arkansas.

20 However, your Honor, as Mr. Fogleman told you in  
21 chambers, there is nothing to tie that weapon to the  
22 crime scene or to Mr. Baldwin. Your Honor, that piece  
23 of evidence is out there. That piece of evidence has  
24 been tested but that piece of evidence -- and I use  
25 the word "evidence" loosely. As his attorney I am

1 entitled to know if some of these things are out there  
2 that the Court is going to say, "You cannot connect  
3 that up. You cannot mention it. You cannot use it."

4 And I am entitled to know that so I can prepare a  
5 reasonable trial strategy. So that I do not have to  
6 be preparing for this evidence up until the day of  
7 trial and then they say, "This is an on-going  
8 investigation. We don't know. We don't know. We  
9 don't know. We don't know. We may find something  
10 next week." And so I have to prepare for that.

11 At some point in time we ought to be able to say,  
12 "This is it. You have got to prepare on these facts.  
13 We don't have anything to connect this to the crime  
14 scene or the defendant."

15 THE COURT: You're asking me to rule on something  
16 that is impossible for me to rule on. I don't know  
17 whether the knife has any factual connection to the  
18 case or whether it ever will have.

19 MR. FORD: Mr. Fogleman told you in chambers --

20 THE COURT: He told me that --

21 MR. FORD: There was -- so do I have to continue  
22 until the day of trial or three days into the trial?

23 THE COURT: I can give you a case I tried. We  
24 tried it. It was a hung jury. The day after we got  
25 the hung jury we put a shovel in a grease trap and

1           came up with the murder weapon that was perfectly  
2           preserved. The second trial that weapon was used.  
3           Nobody knew where that was until at that time. Mr.  
4           Gitchell remembers the case. I see him smiling.

5           But I don't know. If the knife doesn't have any  
6           relevance, then I'm going to rule that it doesn't come  
7           into evidence. They would be foolish to get up in  
8           front of the jury and talk about a knife that they  
9           cannot trace to or connect to the crime.

10          MR. FORD: If they would be foolish to do so, I'm  
11          just asking that you simply enter an order requiring  
12          them to not mention that.

13          THE COURT: I'm going to enter an order that both  
14          of you will be expected to follow the rules of  
15          evidence and if the knife can't come in according to  
16          the rules of evidence, I'm going to rule that way just  
17          flat, pure and simple. But I'm not about to rule at  
18          this point that it can't come in when there is a  
19          possibility that they could connect it later. If they  
20          cannot connect it, you're going to win, okay?

21          That's all I can do. I don't know what the  
22          evidence will be. Y'all have a much better viewpoint  
23          of the evidence than I do. I cannot rule in limine at  
24          this point. I might be able to make a ruling that  
25          you're not to discuss anything in the opening

1 statements or voir dire that you know can't be  
2 connected or tied up to the case. I can do that. I  
3 don't think anybody would want to do that though.  
4 That's the best I can do because I simply can't rule  
5 now restricting evidence because I don't know the  
6 status of it or what will come of it at time of trial.

7 MR. FORD: My next motion in limine is with  
8 respect to something I think the Court can rule on,  
9 and that is with respect to Luminol testing.

10 THE COURT: The motion has already been granted  
11 in the back room, but we will do it officially right  
12 now.

13 MR. FORD: Thank you, your Honor.

14 Lastly, I filed a motion for grant of use  
15 immunity to either one of the co-defendants or both  
16 prior to the trial of Mr. Baldwin.

17 Your Honor, Judge Eisele has recently ruled  
18 regarding the issues of the application of the death  
19 penalty to whether or not an individual is a  
20 participant in the crime, in the actual taking of the  
21 life of the victim, as to whether they were an active  
22 participant or a bystander. That clearly has an  
23 impact on this case because I feel it will affect the  
24 jury charge on the issue of the death penalty if we  
25 arrive at that phase. Your Honor, I feel that that

1 also --

2 THE COURT: Was that appealed to the Eighth  
3 Circuit?

4 MR. FORD: The State --

5 THE COURT: Judge Eisele also ruled on your  
6 motion a while ago that death qualification of the  
7 jury that produced juries that were predisposed to the  
8 death penalty was overruled by the Eighth Circuit and  
9 overruled -- and affirmed by the Supreme Court on the  
10 Eighth Circuit ruling. So I don't know.

11 MR. FORD: I'm making my argument and you can  
12 rule as you need to but, your Honor, I feel --

13 MR. STIDHAM: I feel it is inappropriate for the  
14 Court to rule on this.

15 THE COURT: I do, too. I don't see how I can  
16 until it becomes the subject of --

17 MR. FORD: Your Honor, I --

18 THE COURT: You are wanting me to rule right now  
19 on that?

20 MR. FORD: I'm also asking, your Honor, because  
21 you have ruled that Mr. Baldwin must go to trial with  
22 Mr. Echols, that he is severed from Mr. Misskelley.  
23 But despite the fact that Mr. Misskelley is severed,  
24 your Honor, we have the issue of premeditation and  
25 deliberation.

1 THE COURT: Mr. Misskelley had to be separated,  
2 and you're aware of the law.

3 MR. WADLEY: That was our motion you granted to  
4 sever.

5 MR. STIDHAM: Your Honor, this issue affects all  
6 of us, and I am not prepared to argue it today, and I  
7 would ask the Court to not even consider it at this  
8 time. No prejudice will result to any party by the  
9 Court ruling on this at a later time.

10 MR. FORD: I mailed a copy of all my motions to  
11 Mr. Stidham, and they were filed on September 24th.

12 THE COURT: I'm not going to rule on it today.  
13 If the necessity arises during the trial, then I'll  
14 rule on it in-camera.

15 MR. FORD: What I'm telling you now I'm trying to  
16 prepare for trial, and it is important to me today  
17 whether or not I can question these other men about  
18 what Mr. Baldwin did with any premeditated and  
19 deliberated purpose. If they are there like Mr.  
20 Misskelley says they are or his statement allegedly  
21 says they are, then the issue of premeditation and  
22 deliberation for my client for capital murder applies  
23 and those two gentlemen have evidence that could bear  
24 on that issue and, therefore, I feel that I'm entitled  
25 to know whether or not I can call them and question

1           them in defense of my client.

2           The only way we can do that is to get a grant of  
3 use immunity and I feel that I need it to prepare my  
4 strategy today.

5           MR. PRICE: Judge, I will tell you right now, Mr.  
6 Ford cannot call my client to the stand. That is a  
7 decision that we will make at a proper time, but we  
8 certainly object to any statements about that at this  
9 time.

10          MR. STIDHAM: I object to having to deal with  
11 this issue with regard to my client's Fifth Amendment  
12 rights at this time. It is not ripe. It is not an  
13 issue. It may even be moot.

14          MR. FORD: Your Honor, if use immunity is granted  
15 to either one of these two guys, they cannot raise the  
16 Fifth Amendment.

17          MR. STIDHAM: Well, I don't think that is his  
18 decision.

19          THE COURT: I'm not going to rule on it today.

20          MR. FORD: When is the Court going to rule on it?

21          THE COURT: When I get ready.

22          MR. FORD: Will that be two days prior to trial  
23 or --

24          THE COURT: It may be during the trial. So you  
25 can plan your strategy both ways.

1 MR. FORD: Thank you, Your Honor.

2 Judge, lastly, just to get some clarification. I  
3 believe the Court told us Mr. Misskelley will be tried  
4 on January 18th, and the trial of Mr. Baldwin and Mr.  
5 Echols will be on February 21st. There are certain  
6 motions that the Court made or that the Court ordered  
7 or may be filed by defense counsel for Mr. Misskelley  
8 which could delay the case being tried on January  
9 18th.

10 My question now is does the State intend on  
11 trying Mr. Misskelley first in light of the fact that  
12 there may be a delay or may not be a delay so we can  
13 plan our strategy as to when our case is going to  
14 trial?

15 THE COURT: I think they have already announced  
16 that they have decided to try Mr. Misskelley first.

17 MR. FORD: But is that going to change if there  
18 is a mental evaluation?

19 THE COURT: I told you that I had conferred with  
20 our case coordinator and found that I can try the case  
21 in January, January the 18th through the 28th, and I  
22 am going to change the venue of that, if you request  
23 it -- are you going to request it?

24 MR. STIDHAM: Your Honor, where is the venue  
25 going to be?

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1 THE COURT: Right now it's right here.

2 MR. STIDHAM: Are we going to be in the Federal  
3 Courtroom on the 18th of January?

4 THE COURT: Are you wanting the venue changed  
5 from here?

6 MR. STIDHAM: Your Honor, that is a question that  
7 is impossible to answer right now.

8 THE COURT: In view of the fact that I have the  
9 Federal Courtroom reserved for the second trial and I  
10 would hate to try two cases in the same county, I'm  
11 going to on my motion change the venue -- based upon  
12 my statement to you earlier when I said I would change  
13 the venue again if I needed to and on your original  
14 motion -- so based on your original motion for a  
15 change of venue, in view of the fact that there's  
16 going to have to be two trials, I'm going to again  
17 change the venue for Mr. Misskelley to Cross County --  
18 strike that. Clay County -- Corning. It will be on  
19 the 18th of January through the 28th. That will give  
20 you nine days to try the case. So unless you are  
21 voicing any objections to it, that is going to be the  
22 order of the Court, and you can prepare an order  
23 appropriately.

24 MR. STIDHAM: Your Honor, may I have some time to  
25 formulate an objection if necessary?

1 THE COURT: You can have about fifteen minutes.

2 MR. STIDHAM: Your Honor, for the record, I would  
3 like to point out that despite the fact that I don't  
4 have any objection to date to the January 18th court  
5 date, something could happen.

6 THE COURT: That is always the case. You could  
7 break a leg. I could. Besides some catastrophe, that  
8 is the date it is going to trial.

9 In the event your motions might require some  
10 additional delay for evaluations then, of course, we  
11 will have to take that into consideration as well.

12 MR. STIDHAM: Your Honor, my concern is that  
13 since September 27th we have been preparing for a  
14 trial in Jonesboro. Now suddenly we have got to start  
15 preparing for a trial in Clay County. Different  
16 venues, two different strategies involved there. And  
17 I would like to have more than fifteen minutes to  
18 formulate an objection to that.

19 THE COURT: I'm basing it on your motion and your  
20 request for a change of venue from Crittenden County,  
21 all right? And y'all were real concerned about where  
22 the venue might be. Obviously we cannot try two cases  
23 in the same county, can we? I don't think it is  
24 possible.

25 MR. STIDHAM: I'm less concerned about that than

1 obviously the other defense lawyers.

2 THE COURT: For that reason, I'm going to change  
3 the venue, based on your motion, to Clay County --  
4 Corning.

5 MR. STIDHAM: Would the Court consider moving the  
6 case outside the district?

7 THE COURT: I don't really see any need to do  
8 that. Y'all made absolutely no showing that a fair  
9 jury couldn't be obtained within this judicial  
10 district. There are nine courthouses. Granted, I  
11 keep seeing these revealing reports on all the TV  
12 channels, and the Commercial Appeal is having a field  
13 day. It would seem to me that the news media could  
14 exercise a little restraint and maybe we could go on  
15 with the business at hand.

16 MR. STIDHAM: Your Honor, that is the exact  
17 point. That is why I want to leave the district.

18 THE COURT: At this time I'm not prepared to  
19 leave the district. I'm prepared, in keeping my  
20 promise to you to change the venue again if necessary,  
21 to move it to Clay County.

22 MR. FOGLEMAN: Your Honor, the record should also  
23 reflect that at our hearing where you considered the  
24 motion to change venue, we announced then if there  
25 were more than one trial, we would have to have that

1 trial before the February date, and you at that time  
2 indicated that you would set another date if it was  
3 required to be more than one venue.

4 THE COURT: I did do that. That is what I'm  
5 reminding you of, and I said I would take that up if  
6 necessary, and I think it is necessary and based on  
7 your motion I'm moving the venue again.

8 MR. STIDHAM: Your Honor, my concern is we have  
9 been geared up since the 27th thinking we were going  
10 to be in Jonesboro and now we are in Clay County.

11 THE COURT: That's closer to home for you.

12 MR. STIDHAM: It is about the same. Actually, it  
13 is a little farther. This would be an appropriate  
14 time, your Honor, if I may, to present my motion for  
15 an extension of time.

16 Again, Judge, the State of Arkansas has had five  
17 months to prepare this case and as the prosecutor  
18 pointed out a minute ago, the investigation is still  
19 ongoing.

20 I am a little bit concerned about how we are  
21 going to be able to digest the information that we are  
22 still receiving, conduct our own investigation -- and  
23 incidentally I don't have a legion of police officers  
24 who can go out and investigate these things for me.  
25 That's something I'm going to have to do on my own.

1 How can we be ready to try this case in 90 days?

2 I understand there's problems with the speedy  
3 trial rules and the nine months rule. But, your  
4 Honor, out of fairness to the defendants we need some  
5 time to prepare our case. I don't want to object to  
6 the January 18th date right now, but I don't want to  
7 waive my right to object --

8 THE COURT: If you're saying there might be some  
9 reason for you to ask for a continuance of that 18th  
10 of January trial date, then of course you can raise  
11 that at any time and any reasonable grounds will be  
12 considered. But I'm setting the trial date for  
13 January 18th and I expect to try it on January 18th.

14 MR. STIDHAM: I understand, your Honor. I just  
15 don't want to waive any objection that might come up.

16 THE COURT: I have also given you the date that I  
17 intend to try this case unless you have good solid  
18 grounds that are reasonable under the circumstances.

19 MR. STIDHAM: Is the Court ruling today that a  
20 change of venue outside the Second Judicial District  
21 cannot under any circumstances take place?

22 THE COURT: No, no. I told you that if necessity  
23 gave rise to it, that I thought the Court had firm  
24 powers to do that, but I'm not choosing to do that at  
25 this time. I don't think it is necessary.

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1 MR. STIDHAM: Will I have the opportunity to  
2 raise that issue at the appropriate time?

3 MR. FOGLEMAN: Your Honor, I don't know how many  
4 times we are going to have to address this issue about  
5 change of venue, but they made the motion. They put  
6 on whatever evidence they wanted to for this change of  
7 venue, and now they are not satisfied with the results  
8 so now they are going to say, "We want a second shot  
9 at it and come back with more proof."

10 MR. WADLEY: Your Honor, in fairness to defense  
11 counsel on that issue, the Court gave us a date that  
12 we had to comply with. The statute certainly  
13 contemplates changes of venue being made up until the  
14 day of trial, and the Court itself has even stated  
15 that it would consider that.

16 THE COURT: You can raise the question of  
17 jurisdiction and venue on the day of trial, gentlemen.  
18 If it is raised, I'm going to hear it.

19 MR. STIDHAM: I'm not complaining about the  
20 Court's choice of venue. My complaint is simply that  
21 since September 27th we've been gearing up for a trial  
22 in Craighead County.

23 THE COURT: What difference does it make?

24 MR. STIDHAM: Judge, I think there's a lot of  
25 difference, but I don't want to have fifteen minutes

1 to formulate an additional change of venue motion.

2 THE COURT: Are you saying you want to try it  
3 here in Craighead County?

4 MR. STIDHAM: At this point that is what we had  
5 prepared to do, and that is what we were anticipating  
6 was going to happen based on what I thought the  
7 Court's ruling was on September 27th.

8 THE COURT: On September 27th there wasn't any  
9 indication which of the three defendants was going to  
10 go to trial first. Further, there was strong  
11 suggestion that there might only need to be one trial  
12 rather than two so I made arrangements on the basis of  
13 utilizing the courtroom next door and that there would  
14 be one trial and that it would be the first one and I  
15 changed the venue to the largest county in this  
16 district with the most diverse population with a  
17 college town, university people as potential jurors,  
18 which I thought was a good selection.

19 Now I'm having to try two cases within 30 days of  
20 each other, and I recognize that that is an  
21 impossibility and based upon your original motion, I'm  
22 going to change the venue to Clay County.

23 MR. STIDHAM: May I request that we move into  
24 chambers and discuss this matter further for  
25 clarification?

1 MR. WADLEY: Based on the Court's ruling that  
2 change of venue as to Mr. Misskelley will be in Clay  
3 County, the February 21st court date on Mr. Baldwin  
4 and Mr. Echols -- that case would only be continued on  
5 factors that would occur that would cause --

6 THE COURT: I'm not going to continue the cases  
7 unless y'all track the statutes on continuances and  
8 have good grounds, reasonable grounds, that are  
9 statutory. Not wanting to try it, not being ready to  
10 try it is not going to be an excuse.

11 MR. WADLEY: That's what I'm telling you --

12 THE COURT: I'm telling you to get ready. Y'all  
13 are going to come to me wanting big fee  
14 pronouncements. Let's earn them. Let's get ready.

15 MR. WADLEY: Judge, I'm talking about delays that  
16 may occur as to Mr. Misskelley -- causing a delay as  
17 to the other trial on the 21st.

18 THE COURT: If his case gets delayed beyond  
19 January 18th and your case becomes first up, you are  
20 set for whatever date it was in February.

21 MR. PRICE: Judge, one thing on that date, it is  
22 my understanding that the date will need to be  
23 February 22nd.

24 THE COURT: Yes, because the 21st is a holiday.

25 Is there anything else we can do today? Are

225

1 y'all going to have any other motions you want heard  
2 on November 16th?

3 MR. PRICE: I anticipate some other motions will  
4 be heard at that point, Judge. I also anticipate that  
5 there will be some motions after Mr. Misskelley's  
6 trial for our trial on some issues that may arise.

7 THE COURT: All right. If you have got any other  
8 motions that you need to have heard, that will be  
9 November 16th at one o'clock in the Osceola  
10 courthouse.

11 (PROCEEDINGS CONCLUDED)

12 OSCEOLA, ARKANSAS, NOVEMBER 16, 1993, AT 1:00 P.M.

13 THE COURT: The Court is ready to proceed. Mr.  
14 Ford, did you have any matters you wanted to present  
15 to the Court today?

16 MR. FORD: I told the Court in chambers that I  
17 did not have anything that I was aware of that I need  
18 to present to the Court, but since I have walked in  
19 here I would like to state on the record that we have  
20 previously addressed to the Court how security was  
21 going to be maintained, and they brought my client in  
22 here shackled at the hands, feet and about the waist,  
23 and I object to that -- bringing him in here in front  
24 of the media shackled the way that the Court has  
25 addressed for that not to be done.

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